SECRET

File No. 5(68)-U.N.O.I/47

Collection No.

1947.

Government of India,
E. A. & C. R. Department.
U. N. O. (I) Branch.

~~Prot.~~ Serial Nos. (I) ——— (70)

(Destroy in ~~1958~~ 1968)

Subject.

Second Session of the Human Rights Commission of the Economic & Social Council.

Previous References.	Later References.
F. 15(3)-cc/46—Vol-II	F. 5(11)-UN-I/48.
f. 6(116)-cc/46.	

S 97 (Unbleached).
MGIPC—S2—688 (S & P) MFP —(6382/A, 16-658)—3-12-48—25,00,000.

EXTERNAL AFFAIRS & COMMONWEALTH RELATIONS DEPTT.

F.R. D.No. 1171-U.N.O.I/47. (1).

The Indian Liaison Officer with the United Nations in New York may be requested to telegraph to us the agenda of the next session of the Human Rights Commission as soon as it is available. A draft telegram is submitted for approval.

2. The question of calling an interdepartmental meeting for the preparation of brief etc. for Mrs. Hansa Mehta will be considered on receipt of the Agenda of the Commission.

BDR 10/7/47. FaR 10.7.47

Issue please. M Gopalaswami 14/7/4

US(C)

(2) Issue

D. 1210-U.N.O.I/47. (3)

FR

For information only. Document No. E/CN-4/22 containing agenda of the Human Rights Commission may be awaited.

BDR 14/7/47. FaR 14/7

M Gopalaswami 15/7/4

US(C)

(4) Issue

P5 Corr.

Copies of document No. E/CN.4/22 containing Agenda of the Second Session of the Human Rights Commission have been received and a copy of it has been supplied to Mrs. Hansa Mehta vide S.No.(4). A copy of this document has also been supplied informally to the Assistant concerned of the C.R.Wing. Copies of the document in question are being forwarded separately to other Departments concerned by the U.N.O.II.Branch.

It is presumed that further necessary action in connection with the preparation of a brief, the desirability of inviting Mrs. Hansa Mehta to ~~xxx~~ attend the interdepartment

(contd. from overleaf)

meeting, if any, to be convened, etc. will be taken by the C.R.Wing who may see and be asked kindly to confirm our presumption.

3. Copies of all relevant documents so far received from the Indian Liaison Officer, New York have been supplied to Departments concerned by UNO.II Br.

4. The following comments are, however, offered on the various items of the Agenda:-

(1) Opening of the Session. It does not perhaps require any comments from Office and no brief on it appears necessary.

(2) Adoption of Rules of Procedure. In this connection documents Nos. E/CN.4/18, E/327 and E/327/Corr.1 are put up. The provisional Rules of Procedure which were prepared by the United Nations Sectt. and approved by the First Session of the Human Rights Commission will be found at slip 'H'. The amendments proposed by the Commission in their first session have been marked in pencil. No brief on this item also appears necessary.

(3) Communications addressed to the Commission. In this connection attention is invited to the decision contained in document No. E/CN.4/19/Add.1. In accordance with this decision the Secretary-General will compile a confidential list of all communications received concerning Human Rights before each session of the Commission and will communicate it to the Members of the Commission. The Chairman or Vice-Chairman will no doubt meet shortly before each session of the Commission with one or two coopted members for the purpose of receiving communications concerning human rights and bringing to the attention of the Commission such communications as may assist it in its work. We do not appear to have received any other paper on this subject.

(4) Invitation to the Officers of the Commission on Status of Women. In accordance with the resolution adopted

by the Economic and Social Council on the 29th March 1947 (Document No. E/425) the Commission on the Status of Women will be represented by its officers, the Chairman, Vice-Chairman and Rapporteur, at the Sessions of the Commission on Human Rights when sections of the draft of the International Bill of Human Rights concerning the particular rights of women are under consideration. It is in accordance with this resolution that these officers of the Commission on Status of Women have been invited to attend the session of the Human Rights Commission. No brief on this item appears necessary.

(5) Report of the Drafting Committee. A copy of the document No. E/CN.4/AC/1/14 containing a Draft Report of the Drafting Committee together with a copy each of the documents referred to therein are placed below. Copies of these documents are being supplied separately to all the Departments concerned by the U.N.O.II.Branch.

(6). Report of the Sub-Commission on Freedom of Information and of the Press. A copy of the document No. E/441 containing the report in question is submitted. In this connection it may be stated that this Report will also be considered by the present Session of the Economic and Social Council and an extract from the brief prepared for the guidance of our Delegation to the Council is placed below. This was prepared in consultation with the I. & B. Department.

(7) Year-Book on Human Rights. In this connection attention is invited to the correspondence at S.Nos. (1), (8), (10), (12), (15), and (35) to (39). The first note prepared by Mr. Neogy and sent to Prof. Hamburger was withdrawn at the suggestion of the India Office. The Second note prepared by Mr. Neogy, Mr. Lal, and Dr. Sen was also considered unsuitable for incorporation in the Year-Book. Now Sir B.N.Rau has been requested to prepare a note for incorporation in the next edition of the Year-Book on Human Rights. The preparation of this note is likely to take some time and it will be forwarded to Prof. Hamberger when received from Sir Rau.

(8) Programme of Future Work. | No comments.
(9) Other items |
(10)

(10). Adoption of Report of Commission to the Economic and Social Council. The report in question will be prepared at the conclusion of the second Session of the Commission on Human Rights and will be discussed at the next session of the Economic and Social Council. No brief on this item seems necessary. If there will be any point on which Mrs. Hansa Mehta will require the instructions of the Govt. of India, she will no doubt obtain them by telegram.

5. The brief prepared by the C.R.Wing for the guidance of Mrs. Hansa Mehta for the last session will be found at pp. 29-44/Corr. in F.No. 15(3)-CC/46, Vol. II. In this connection attention is also invited to S.No.(19) of the above mentioned file.

23/7/47 23.7.47

The second Session of the Commission on Human Rights is due to open in Geneva on 25th August, and its sittings will continue up to 8th September. Copy of the Agenda is at Flag M. For the first Session of the Commission, the C.R. Wing prepared notes on the Agenda which was discussed at an Interdepartmental meeting of the representatives of C.R., E.A.D., Home and Information Departments and the Chamber of Princes. The same procedure was followed for briefing Mrs. Hansa Mehta this time as well. It would perhaps be useful to furnish Mrs. Hansa Mehta with a copy of the C.R. Department's comments on the Agenda and ask for her views before an interdepartmental meeting is called. I understand she will be in Delhi till 31st of this month.

2. Mrs. Hansa Mehta rang me up and said that she would like to have an Adviser, preferably a person with legal experience. For the last Session of the

Commission Dr. Lanka Sundaram was appointed as her adviser.

3. I have already made arrangements for Mrs. Hansa Mehta's air passage to Geneva.

4. The C.R Wing may please furnish their Comments on the item of the Agenda.

M.Gopala Manon
(M.Gopala Manon)
25.7.47.

J.S(E)

Yes, we can again consider the question of appointing a legal adviser here

R.R. Saksena
25.7.47
(R.R. SAKSENA
Joint Secy.)

Immediate

C. R. Wing (Mr Jha)

E.A. Wing no. No.D1210-UNO/47 dy 26.7.47

we regret the wrong [illegible] we [illegible] further it is not possible [illegible] to prepare a brief note [illegible] we have a meeting with the [illegible] 29th or 30th. I suggest that I shall be ready for a discussion clarification of our ideas & if necessary we will furnish the a brief Thereafter. Perhaps EA wing will come to consult us re. appointment of Adviser

V.J
26/7/47

J.S.(E) (E. A. Wing)

C. R. Wing c/o No. U.N.O. 635/47-A.S.I
Dt 26/7/47

1 Draft, ~~Title~~ Minutes of the Inter departmental Meeting held in E. & S.L.Q Department on 30th July at 10.30 a.m to consider the agenda for the Second Session of the Human Rights Commission is placed herein

2 Mrs Hansa Mehta wishes to visit Denmark & Sweden after the meeting of the Commission This matter will be taken up

3 Mrs Mehta requires a Stenographer for sessions of the the Commission D.S.E.T may please make arrangements

4 The question of Advisers is being considered

5 The terms of deputation of Mrs Mehta may be finalised by D.S.E.T.

U. Gopalakrishnan 30/7/47

U.S.(E) UNO

R. Asaiah 30.7.47

J.S.(C) 30/7

After issuing Minute, please pass on item 2, to 5 above for E II for information & action & return file re item (2) above

M. Gopalakrishnan
31/7/47

L/WO I

(5) Issue

EXTERNAL AFFAIRS & COMMONWEALTH RELATIONS DEPTT.

(E.A.Wing).

F.R. D.No. 1350-UNO.I/47. (6)

A copy of the ~~message contained in~~ telegram may be sent to Mrs. Hansa Mehta for necessary action as in the draft letter below.

BDR 26/7/47 Upl 26.7.47

cf. Sno (7)

A telegram has already been issued in reply

Mukherjee 28/7/47

U.S.(C)

Mukh 28/7

I rang up Mrs Hanna Mehlä re telegram below. She has no preferences and she asked me to reply as in the draft below.

M. Gabeldean
26/7/47

R A Jackson
26.7.47

(7) Issue

D.No. 1367-UNO.I/47. (8).

For information. No action vide S.No.(7) and notes above.

(These papers will be amalgamated with the main file on return)

M Gabeldean
5/8

Reference Under Secretary's note dated the 31st July 1947. A copy of notes relating to items 2 to 5 has been given to E.II. Branch for information and necessary action. Action, if any, with regard to item No. 2 in so far as the U.N.O.I.Branch is concerned will be taken on receipt of a reply to our telegram at S.No. (7).

(The question of advice is presumably being considered by U.S.(c))

I have issued a telegram yesterday to Dublin about Vienna. The question of Bolzano may be decided.

(9) Issue

M Gabeldean
5/8/47

I doubt if it will be possible for us to secure a competent legal advisor from India especially to assist Mrs. Mehta. Do we have anyone in the High Commr's office in London who could be utilised for this purpose.

R. P. Sahasrabudhe
5.8.47

US(C)
5/8

The Commission will now meet only by end of November in Geneva. This matter may therefore be taken up later.

[illegible]
5/8/47.

R. P. Sahasrabudhe
6.8.47

D. 1526-UNO. I/47 (10) JR

The Second Session of the Human Rights Commission which was scheduled to take place in Geneva on the 25th August 1947 has now been postponed and is likely to meet in Geneva sometime ~~after the 2nd week of October~~ by the end of November 1947. A copy of the telegram has been given to the General Branch for the cancellation of Mrs. Hansa Mehta's passage which was booked for the 23rd August 1947. The contents of the telegram may also be intimated to Mrs. Hansa Mehta for her information. A draft is submitted for approval.

BNR 6/8/47. Ptl. 6.8.47

M. Venkatesan 12/8/47

(11) Issue

US(C) 6/8 6/8 BNR 6/8

Cf. Sno (1)

Cf. Sno 4.
Remove 8/8 11/8
G. Br may pl. remove a copy of telegram from Sup M.

G

E II W.

US(C)

BNR 12/8

E.A. & C.R. Department (India)

(E.A.Wing).

F.R. D.No. 1537-UNO.I/47. (12)

The contents of the telegram may be passed on to Mrs. Hansa Mehta for information as in the draft telegram put up for approval.

BDR 11/8/47 RL 11.8.47

11/8/47.

U.S.(C)

(13) Issue

F.R. D.No. 1786-UNO.I/47 (14).

pp. 19-20

A copy of the brief on articles 32 and 33 of the Draft Outline of International Bill of Rights (prepared by the Division of Human Rights) furnished by the Home Deptt. may be sent to Mrs. Hansa Mehta for her information and guidance. Copies of this brief may also be sent to the C.R.Wing and the I & B. Department in continuation of our communication at S.No.(5). A draft is submitted for approval.

2. It has now been decided that the next session of the Commission on Human Rights will meet in Geneva immediately following the second regular session of the General Assembly, the undermentioned points raised by Mrs. Hansa Mehta may perhaps be considered:-

cf. notes on p.6 ante

(1) She has expressed a desire to visit Denmark and Sweden after the meeting of the Commission

(2) She may be provided with a legal adviser.

As regards the second point attention is invited to J.S.(C)'s notes dated the 5th and 6th August 1947 on p.10 ante.

BDR 1/9/47.

3. Incidentally, the brief at S.No.(5) only covers items (1) - (5) of the Agenda. It is for consideration whether Mrs. Hansa is to be briefed in respect of items (6) and (7) of the Agenda. In this connection please

Cor. p. 5

See items (6) and (7) of office note on page 3 ante.

Ahd.
1.9.47

4.S.(c)

Item (6). An extract of the brief given to the delegation to the E.C.S Council on this item may be given to Mrs Hansa Mehta

Item (7). Sri B.N. Rau is writing a note on Human Rights in India for incorporation in the next edition of the Year Book. This information may be given to Mrs Hansa Mehta

M.G. Ahluwalia
1/9/47

R. A. Sahasrabudhe
2.9.47

J.S.(c)

Ref Sno (14) and notes from prepage. A revised draft is submitted for approval. After issue, the points raised in para 2 of office note of 1/9/47 will be processed.

Bdk
3/9/47.

VDN
4/9/47

Salkhan
4.9.47

A.S.(c)

(15) Issue

D.No. 1972-UNO.I/47. (16).

A copy of the United Nations document No. E/CN.4/21 referred to in paragraph 1 of the F.R. received from our Representative in New York has been put up for reference in connection with item No. 13 of the Supplementary Agenda of the Second regular Session of the General Assembly (Draft Charter of International Human Rights and Duties) and the file has been referred u/o to the Ministry of Home Affairs and the C.R.Wing. More copies are not yet available.

2. The Secretary of State has forwarded for our advance information a copy of certain documents which the U.K.Representative on the Human Rights Commission will be submitting at its next meeting which is likely to take place in the first week of December 1947 in Geneva. Although a copy of these documents will, no doubt, be sent to our Representative on the Commission, Mrs. Hansa Mehta, direct by the U.N. Sectt. in due course, it is suggested that a copy of the F.R. together with its enclosures may be forwarded to her for information and to the Ministry of Home Affairs and the C.R. Wing for their comments, if any, as in the draft below.

3. As regards the points ~~raised~~ mentioned in paragraph 2 of Office note dated the 1/9/47 on p. 11 ante, We do not know exactly what facilities Mrs. Hansa Mehta will require to be provided by us for her visit to Denmark and Sweden after the meeting of the Commission. ~~and for her~~ We may perhaps get this point cleared from her. A paragraph has accordingly been added to the draft put up vide para 2 above. As regards the provision of a legal adviser to Mrs. Hansa Mehta, a draft d.o. letter to the High Commissioner for India in London is put up (c.f. Joint Secy's. note on p. 10 ante.)

BOR Rd. 4/10/47. 6.10.47

R. A. Sahgal 7.10.47

(17)+(18) Issues

P. S. V. 9A.

D. No. 2244-UNO.I/47 (19) FR

This is a revised provisional agenda for the Second Session of the Commission on Human Rights which will be meeting at Geneva from the 1st to 16th December 1947. Copies of this document have been sent to the Ministries concerned and the C.R.Wing by the U.N.O.(II) Branch. All the items excepting items Nos. 6 and 8 which have now been included in the revised provisional agenda have already been considered and necessary instructions have been issued to our Representative Mrs. Hansa Mehta. The provisional agenda received earlier will be found at p. 5/corr.

S. Nos. (5) & (15)

2. It is now for consideration whether any brief in regard to items Nos. 6 and 8 is to be prepared for the guidance of Mrs. Hansa Mehta. As regards item No. 6 "Report of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities" it may be stated that this sub-Commission will be meeting at Geneva from the 24th Novr. to 5th December 1947 and the Report of this Sub-Commission will only be available after the 5th Decr. 1947 and during the Session of the Commission on Human Rights. In the absence of the Report no brief can possibly be prepared. Mrs. Hansa Mehta will no doubt obtain our instructions, if any, by telegram. Meanwhile a copy of the brief given to our representative on the Sub-Commission on Discrimination and Minorities may be sent to her.

This will be prepared by C.R. Wing.

3. As regards item No. 8 "Consideration of the Provisional Questionnaire formulated by the Trusteeship Council" the C.R.Wing who are mainly concerned may see and be asked kindly to say if they have any instructions to give to Mrs. Hansa Mehta.

Extracted portion

4. Item No. 2 "Adoption of Rules of Procedure" included in the Provisional Agenda has not been included in the revised agenda under consideration.

BNR 21/10/47.

Ptl 21.10.47

(A copy of the revised agenda and the dates of the meeting of the Commission on Human Rights as given in the latest Calendar may be communicated to Mrs. Hansa Mehta separately).

JS(C)

R. R. Saksena 22.10.47

(R. R. SAKSENA
Joint Secy.)

UNO. 18/11/47 O.S.I

CR Wing

(Mrs. S.N. Shivpuri by name)

E.A. Wing no. No D2244-UNOI/47 of 22.10.47

(From -/s/page)

C R. Wing

We agree - to - the action - proposed in - para 2 of E A Wings note on - s/page.

Regarding - para 3 - the question is - being examined and our - papers on - the subject - will - be shown - to - the E A Wing.

GL
23.X.47

SSW
23/X/47

AS.(O)

The file has been referred to us with ref. to para 3 of E.A.Wing note on pre/note. The point raised therein is being examined & our file on the subject will be shown to E.A.Wing soon.

Sh. Sharpe.
23.10.47.

E. A. Wing (Mr. R.R. Saksena)

Ministry of S.A. ec.R (C.R.Wing) U.O. NO. UNO. 1811/47-O.S.I
DT 27/10/47

D 2408-UNO/47

UNO I
23/10
Mr R 28/10

J 2348-UNO(D)

A draft forwarding a copy of the document No. E/CN.4/22/Rev.1. containing a revised provisional agenda of the Second Sessionof the Commission on Human Rights to Mrs. Hansa Mehta is put up for approval.

(Our main file has been referred u.o. to the C.R.Wing).

22/10/47. 22.10.47

R. P. Sarkar
23.10.47

J.S(C)

(20) Issue

 Immediate

Ministry of External Affairs and
Commonwealth Relations.
(C.R.Wing)

Subject:- Second Session of the Human Rights Commission.

Sno (17)

Reference Mr.Saksena's demi-official letter No.F.5(68)-UNO.I/47 dated 13th October,1947. We have no comments to make on the proposals made by the U.K. Representative on the Commission. The three new Articles proposed seem to us to be unobjectionable. As regards the draft statement which is Annexure II of the papers sent to us, we feel that form (c) suggested in paragraph 1 of the statement would be the best method of presenting the recommendations of the Commission to the General Assembly. There is a real need of separating what is immediately practicable from what should be aimed at; and if this is done, no one can really take objection to it. Incidentally, this course was also adopted by our Constituent Assembly in framing Fundamental Rights when it separated them into two parts, one justiciable and the other as "Directive principles of State policy".

2. After the comments of the other Ministries concerned and of Mrs.Hansa Mehta have been received, we suggest that an Inter-Departmental Meeting may be called to finalise our views in the matter. In any case, it would seem to be desirable to call such a Meeting before Mrs.Hansa Mehta leaves India for the Session.

(B.F.H.B.Tyabji).
Joint Secretary.
22-10-47.

Cor p.25.

p.26 C.

D2393-UNO/47

E.A.Wing.(Mr.Saksena).
C. R. Wing u.o.No. UNO. 15/47-O.S.I Dt 22/10/47

Read on 27/10 UNO I 27/10 WcR 27/10

Extract from C.R.Wing F.No. 54-12/47-OSI.

Slip B

The questionnaire is exhaustive, but we attach particular importance to the following questions, and our Delegation should insist on their retention if any attempt is made to omit them:

11, 16, 17, 18, 24, 28, 32, 41, 42, 43, 44, 45, 59, 60, 67, 70, 79, 80, 81, 84, 112, 114, 118, 124, 126, 127, 136, 148, 160, 166, 203, and 246.

Sd/- S.Dutt.
29/10/47.

E.A.Wing
C.R.Wing u.o.No. UNO 326/47-O.S.I. dated 29/10/47.

D.No. 2392-UNO.I/47. (21).

D.No. 2391-UNO.I/47. (22).

D.No. 2448-UNO.I/47. (23).

S.No.(21). This is for information only, c.f. S.No.(20)

S.No.(22). For present information. The High Commissioner may perhaps be requested to intimate the name of the Official who is likely to be deputed as legal adviser to Mrs. Hansa Mehta. A draft telegram is submitted for approval.

S.No. (23). For information only. Copies of this document have been forwarded to Mrs. Hansa Mehta and the C.R. Wing by the UNO.II.Branch separately.

Reference u.o. note on p.17 ante. This is also for present information. The question of holding an Inter-Departmental meeting as suggested by Mr. Tyabji in para 2 of his note may perhaps be considered after the comments of the Ministries of Home Affairs and the I. & B. are received. These Ministries may be reminded to expedite their comments if any. A draft reminder is submitted.

from C.R.Wing's file

Reference notes on p. 15 ante and extracts above. A draft to Mrs. Hansa Mehta is submitted for approval. An addition has been made in the draft with reference to para. 2 of Mr. Tyabji's note on pre-page and S.No.(22).

30/10/47.

Unv. I (24)-26) Issue R.R. Sahani 31.10.47

D.No. 2459-UNO.I/47. (27).

D.No. 2460-UNO.I/47. (28).

S.No.(27). For information only. A copy of the letter addressed to the Secretary-General of the United Nations on 20th September 1947 by the Chairman of the Commission on Human Rights may be forwarded for information to the Ministries of Home Affairs and I.&B. and the C.R.Wing who are mainly concerned with the International Bill of Human Rights. A draft endt. is submitted for approval.

2. S.No. (28). For information only.

3. E II, P.V. and G. Branches will take necessary action with regard to the terms of deputation, passport, travel arrangements, etc. of Mrs. Hansa Mehta. A separate note has been sent to those Branches.

5 11.47

R. A. Sahasrabudhe 7.11.47

(29) Issue

(30) Issue.

D-2588-UNO.I/47 (31)

D-2636-UNO.I/47 (32)

For information only. Copies of document No. E/CN.4/25 are being sent to the Ministries concerned and Mrs. Hansa Mehta by UNO.II Branch separately.

2. As verbally instructed by J.S a draft is submitted for approval.

3. A draft D.O. letter to Mrs. Hansa Mehta is also put up for approval.

16/11/47 18

18.11.47

R. A. Sahasrabudhe

(33) + (34) Issues 18.11.47

Ministry of EA. & CR.

F.R. D.No. 2686-UNO.I/47. (35)

Copies of the F.R. have been given to P.V. and Est. II. Branches for necessary action in regard to her passport and the provision of a stenographer during the period of the session of the commission.

2. Dr. Humphery, Director, Human Rights Division Geneva may be informed that Mrs. Hansa Mehta will be reaching Geneva on 25th Novr. and that the name of her legal Adviser will be intimated to him by the High Commissioner in London. The High Commissioner may also be requested to send the adviser to Geneva ~~to contact Mrs.~~ by Hansa Mehta on 25th Novr. ~~Two~~ A draft telegrams ~~are~~ is submitted for approval.

WS 18/11/47 BDR 18/11/47 Rhl 18.11.47
E II
J.S.(C)

We have received a telegram from Hicomind today on the subject of the Legal Adviser. Telegram of Dr. Humphrey may please be put up with the file submitted with the telegram from Hicomind

R. P. Sahasrabudhe
19.11.47

(36) Issue

JR D-2701-UNO.I/47. (37)

The telegram received from the High Commissioner, London and referred to in Joint Secretary's note above has been added to the file at S.No.(37) and is submitted. In view of S.No.(36) no further action on the F.R. seems necessary. The contents of the telegram ~~will perhaps~~ may kindly be communicated to Mrs. Hansa Mehta by J.S.(C) when she comes to attend the

(contd. from prepage)

Interdepartmental meeting tomorrow the 21st Novr. 1947. 3-30 pm

BNR 20/11/47. (J.S.(c) may wish to keep this file for study — A spare set of the Agenda and brief is placed below if required).

Ptl. 20.11.47

[Minute of an Interdepartmental Meeting held on 21-11-47]

J.S.(c) D.S.(x)

A meeting was held in the Ministry of External Affairs and Commonwealth Relations on the 21st November, to finalise the brief given to Mrs Hansa Mehta for the forthcoming meeting of the Human Rights Commission. Those who attended were Mrs Hansa Mehta, Mr. B.Tyabji, Joint Secretary, C.R. Wing, Mr. G.V.Bedekar, Deputy Secretary, Ministry of Home Affairs, Mr. M.Azim Husain, Deputy Secretary, Ministry of Information & Broadcasting, and myself.

2. It was agreed that the brief already prepared for Mrs Mehta adequately covered the items originally on the agenda. There were, however, certain fresh matters for discussion.

3. Note was taken of the 3 new Articles (8a, 10a and 10b) which the United Kingdom representative is to submit for insertion in the draft of a International Bill of Rights. It was agreed that the inclusion of these Articles should be supported.

(A)

Mrs Mehta suggested that there should be an Article designed to prohibit the forcible conversion of any person from one religion to another. It was agreed that this was desirable and that a fresh Article, to be numbered perhaps 14a, should be submitted for insertion in the International Bill of Rights.

4. The draft statement to be submitted by the United Kingdom delegate was also discussed. In this the different forms in which the recommendations of the Human Rights Commission can be presented to the General Assembly are discussed. It was agreed that it would be best if these recommendations were presented in the form of a declaration plus a convention or

(#) International Bill of Rights.

5. Copies of this note may be sent to all who attended the meeting, including Mrs Mehta.

H. Dayal

22-11-1947.

UNO I

Recd. 25/11 MuR 25/11

As instructed in notes above two drafts forwarding a copy of the Minutes of the Meeting to all who attended the meeting are submitted for approval.

BDR 25/11/47 Ptl 25.11.47

H. Dayal 26.11.47

J.S.(C)

(38 and 39) Issue

Ministry of EA. & CR.
(E.A.Wing).

F.R. D.No. 2729-UNO.I/47. (40)

The book in question has been obtained from the Library of the Ministry of EA. & CR. and handed over to Mrs. Hansa Mehta who will carry it to Geneva. ~~Mr.~~ Sir Dhiren Mitra may perhaps be informed as in the draft telegram below. After issue, Librarian may please see and be requested to replace the book by purchasing a new one. (Library No. 3060, D/18/2/47.

BNR Ad. 22/11/47 - 22.11.47

H. Dayal 22.11.47

D.S.(X)

(41) Issue

Librarian may please see with reference to notes above.
BNR Ad. 25/11 - 26.11.47

FR D 3072-UNO I/47. (42)

Seen. Another copy of the book has been purchased & kept in duty.
U.S.(Ad) 26.11.47
U.N.O.(I)

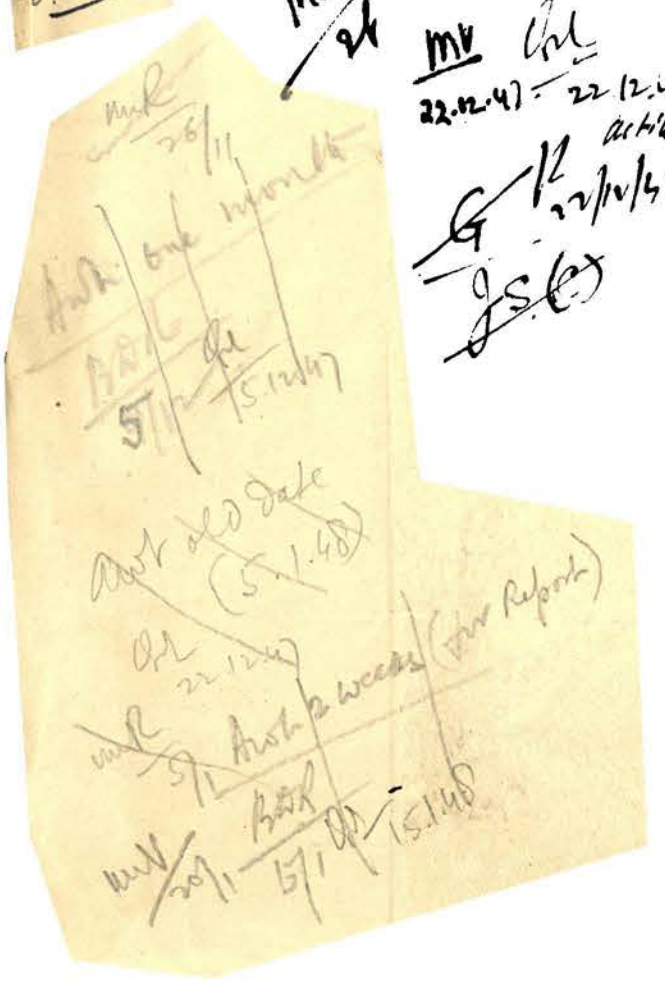
This concerns 'G' Branch which will take such action as may be necessary.

MV Ad. 22.12.47 - 22.12.47
action already taken.

G 27/12/47

D.S.(G)

R. R. Saksena 22.12.47)



Ministry of E.A. & C.R.

FR D.212-UNOI/48. (43)
(44) Issue.

Can't we arrange for such help from the office of our H.C. in London? The complaint seems justified.

Sd. G.S. Bajpai.
17-1-48.

Did we not ask the H.C. to arrange Secretarial assistance for her?

Sd. R.R. Saksena.
20-1-48.

Attention is invited to para. 3 of U.S.(UNO)'s note on page 6 ante. A copy of this note was given to E.II Branch for necessary action. An extract of para.3 of FR with the marginal notes by the S.G. and J.S.(C) has now been given to the E.II Branch for clarification.

d/a I.

2. Draft D.O. letter to Mrs. Mehta acknowledging the receipt of her letter and Report is submitted for approval.

3. A copy of Mrs. Mehta's report on the Second Session of the Human Rights Commission may be sent to the Ministries of Home Affairs and Information and Broadcasting, C.R. Wing of this Ministry, High Commissioner for India in London and to the Delegation Office at New York. Draft O.M. is put up. d/a II Mr. Masani, who is our representative on the Sub-Commission on Prevention of Discrimination and Protection of Minorities and Begum Hamid Ali, representative on the Commission on the Status of Women may be interested in the Report of Mrs. Hansa Mehta. Begum Hamid Ali is now at U.S.A. and a copy of the Report may be given to her on her arrival in India. Draft D.O. letter d/a III to Mr.Masani is put up.

MV 22.1.48. 22.1.48

M G Shalekar 26/1/48

R R Saksena 26.1.48

(45), (46) & (47) Issue.

E II CS 23/1/48

U.S (UNO)

After the [illegible] action is over, Para 2 and (44) will be circulated in UNO I Branch.

E. II Branch may kindly remove extract at Slip L.

aut. 1 month
mm 2/2

25

Ministry of EA. & CR.

D.No. 266-UNO.I/48. (48)

A copy of the Secretary-General's note dated the 9th January 1948 together with a copy of the Report of the Commission on Human Rights (Second Session) may be forwarded to the Ministries concerned and they may be requested to furnish their comments for communication to the United Nations Secretariat. A draft O.M. is submitted for approval.

BSR 28/1/48 D.M 29.1.48

I have amended the draft.

U.S (U.N.O)

A copy should be sent to the Legal Adviser of this Ministry for Comments

H Gopala Rau 30/1/48.

U.N.O I

(49) Issue

The Legal Adviser (Kunwar Sir Dalip Singh) may see with reference to notes above and kindly remove a copy of the Secy-General's note dt 9-1-48 together with a copy of the Report for favour of his comments.

BSR 6/2/48 D.M 7.2.48

Legal Adviser to the Ministry of E.A & C.R.

I have removed a copy & the comments will be forwarded later.

D.S. L.A. 9-2-48

'P' I regret the comments* are fragmentary. To discuss the matter at length in each article would however mean a brochure.

Dalip Singh 17.2.1948.

U.S (U.N.O)

J.S (L) may see the Comments of the Legal Adviser. We should remind C.R. Wing. Ministries of Home, Ex & Law. H Gopala Rau 19.2.1948

Ministry of E.A. and C.R.

Ref. u.s. (UNO)'s note d 18-2-48 on pre-page.

Draft O.M. (Reminder) to the Ministries Concerned is put up.

MV D.M.
19-2-48. 19.2.48

(50)/Secret

U.S.(UNO.)

Ack 1/3
Bnk DM
25/2 2[illegible]

D.No. 637-UNO.I/48. (51). JR.

D.No. 645-UNO.I/48. (52).

For present information. Comments from the Ministries of Home Affairs and Law may be awaited.

BOR DM
25/2/48 1.3.48

U.S.(UNO.)

-27- (Ministry of Law)

Subject:- Report of the Second Session of the Commission on Human Rights.

Reference Min. of E.A. to G.R. O.M. No. D.266-UNO.I/48, dt. 4th March 1948.

The comments of the Ministry of Law are required on -

(1) Draft International Declaration on Human Rights.
(2) Draft International Covenant on Human Rights.
(3) The question of Implementation including the setting up of an International Court.

} Contained in Annexes A, B and C of the Report.

2. As regards the International Declaration on Human Rights, the proposed Declaration appears to set out merely certain ideals. As the Representatives of Australia and United States have stated, the language of the Articles of the Declaration is not satisfactory in-as-much as it is both, declaratory and mandatory. It appears that it has been agreed that the Declaration imposes no legal obligation and requires no measures for implementation. To much of the Declaration, there can be no objection, but it will not serve any useful purpose to make any detailed comments thereon at this stage, because at least one State, namely U.S.S.R. has reserved its right to present a fresh Declaration on Human Rights.

The Draft International Covenant on Human Rights stands on somewhat different footing in-as-much as thereunder, each State undertakes to ensure that its laws should secure to all persons within its jurisdiction, whether citizens or persons of foreign nationality or State-less persons, the enjoyment of certain human rights and fundamental freedoms. Before signing this Covenant, it should be seen

P.T.O.

to what extent the laws of the country concerned proposing to sign the Agreement is in accord with the terms of the Covenant. It appears that if the Covenant in its present form is agreed to, it will involve changes in the law in certain respects.

As regards Implementation, the question will arise after the forms of the Declaration and Covenant are actually settled.

3. The proposed Draft Constitution of the Dominion of India contains a statement of the fundamental rights in the new Indian State. I have not been able to get a copy of the Constitution, but from the summary published in today's papers, it would appear that these fundamental rights are divided into two classes - (1) certain rights regarding freedom of speech, freedom to assemble peaceably and without arms, etc rights which can be enforced in a Court of Law and it appears that there is a provision giving a right to move the Supreme Court for the enforcement of these fundamental rights; (2) there are certain other rights which though not enforceable by any Court, are nevertheless fundamental in the governance of the country and it is specifically provided that it shall be the duty of the State to follow these principles in making laws. As regards these fundamental rights which are really directive principles of State policy, various injunctions are given regarding the right to education, to just and humane conditions of work, to a living wage for workers and so forth.

4. India can agree only to those fundamental rights which will be in accord with its own Constitution. As regards Implementation, it has already been stated that the right to enforce certain fundamental rights in a Supreme Court is guaranteed in the new Draft Constitution. This will probably suffice, but if any State wants to raise a question that its nationals are being deprived of any fundamental rights which are guaranteed by the Covenant, provision may be made for the decision of such questions in an International Court. The occasion for a reference to the International Court by any State against another State will probably be rare.

S/S

N.C. Ray
26-2-48
(N.C. Ray)

U.O.D. 3996-C.R/48.

D 706 UNL/48

Min. of E.A. & C.R.

Min. of Law U.O. No. D. 363/48-GA. dated 26.2.1948.

Ministry of E.A. & C.R.

The preceding U/O. note containing Comments of the Ministry of Law on draft International Declaration on Human Rights etc. is for present information. Comments from the Ministry of Home Affairs may be awaited cf. S/no. (52).

S. Nos (51) & (52) and notes against them at p 26 ante may also be seen for information

BNR 1/3/48. BM 2-3-48

U.S. (PSU)

D.No. 725-UNO.I/48. (53). PK

Please put up the pp.

Sd/- M.Gopala Menon.

Submitted. From document No. E/C.4/9, dated the 1st December 1947 it would be seen that the Interim Committee of Programme of meetings have suggested that the Third Session of the Human Rights Commission should take place from 17th to 28th May 1948 in New York. The suggestion will have to be approved by the Economic and Social Council in their current session. A copy of this document ~~may~~ has already been ~~perhaps be~~ sent to Mrs. Hansa Mehta for her information by U.N.O. II Branch separately.

As regards the second query made by Mrs. Hansa Mehta, it may be stated that the report of the Second Session of the Human Rights Commission was forwarded to the Ministries of Home Affairs, Law, I.& B. and the C.R.Wing for their Comments on the 4th February 1948. Comments from the Ministry of Home Affairs and the C.R.Wing are still awaited. On receipt of these comments an Interdepartmental meeting ~~may~~ will perhaps be held to formulate the views of the Govt. of India to be tramsmitted to the Secretary-General of the United Nations. It would be advisable if Mrs. Hansa Mehta who is at present in Delhi is also invited to attend the Interdepartmental meeting.

S.No. 49.

BDR 4/3/48 U.S (P&V) might like to remind Mr.Raman (Home Mtny.) on phone with refce. to his letter at S/No. 52.

DM 6.3.48

U.S(P&V)

The 6th Session of the ECOSOC is coming to an end. Please telegraph Indiadel regarding date of the Third Session of the Commission on Human Rights - Please put up draft

S. Sen 8.3.48.

A draft telegram as instructed by DS.(UNO) in his note above is submitted for approval.

BDR 10/3/48 DM 10.3.48

(54) Issue Issue S.Sen 10/3/48

DS(UNO)

D.No. 886-UNO.I/48. (55).

For present information. Replies from all the Ministries addressed in S.No. (49) have been received with the excention of C.R.Wing who may be reminded as in the draft below.

2. A reply to S.No.(54) regarding the venue and date of the Third Session of the Commission on Human Rights has been received from Indiadel and is being dealt with ~~on a coperate~~ in the linked file below.

(d.7. for order)

15/3/48. DM 15.3.48

D S (UNO).

slightly amended

S. Sen
16.3.48

(56) Issue.

(57) Issue (Copy).

D.No. 962-UNO.I/48. (58).

Submitted. The comments offered by the Ministries of I. & B., Home Affairs, Law and by Kunwar Sir Daleep Singh will be found at S.Nos. (51), (55), notes on pp.27-29 and the statement at slip 'P' respectively. In this connection attention is invited to the concluding portion of Office Memo. from the Ministry of Home Affairs and it is for orders if an inter-departmental meeting may be convened to formulate the views of the Govt. of India before they are forwarded to the Secretary-General of the United Nations. Our views are required to be ~~xxxxx~~ forwarded to the Secretariat before 3rd April 1948.

23/3/48 DM 23.3.48

D.S(UN)

Ref. (Sls. 51, 55, 58

The views of the different ~~diffe~~ ministries are at variance with each other. Moreover, the ministry of law pp. 27-29/a. have raised certain questions of principle. I think we ought to accept the suggestion of the Home Ministry and convene an Inter-Departmental Conference on 2.4.48. Mrs. Hansa Mehta, our representative

Xcl. 55

MFP—81S SxP—68IC—(M-1492)—11-10-41—3,000 Pads.

on the Commission on Human Rights may also be invited. We can then finalise our views. As matters stand at present it would be difficult to incorporate the views of the different ministries into one cogent document. Our reply to the S.G's letter would be a little delayed, but this would be understandable insofar as the S.G. did not send his letter until Jan. 1948 although the relevant resolution was passed by the Economic & Social Council as early as March 1947. We should also obtain a copy of our draft Constitution. S. Lee JS(UN) 23.3.48

The draft Constitution of India is now available I would suggest that the Legal Advise may kindly examine the suggestions of the various Ministries & also re-examine his own views in the light of the new draft Constitution ⊗ of India (which is now available) & prepare a brief for the use of our representative (Mr Hama Nath) with the U.N.O. ("Human Rights Commission"). 30.3.48.

Legal Advise (Sri Jalil Singh)

⊗ A copy has since been supplied by Legislative Department & is placed below. It may be removed by L.A.

Number.	Description of papers.	Remarks.

Sent to/from the Calcutta Office on the 19

List of Papers

Branch.

S. 50.

I regret to say I cannot comply with this request. Suggestion I cannot modify my views because of the views of Ministries or Institutions. They are not based on either if any legal point arises I am willing to give an opinion on the Subject. None such arises or is shown in the suggestion. Nor have I the capacity to draw up a brief nor is it part of my job as I understand it at present.

Yours sincerely,
Ralph Hay

30-3-48

D(UNO) JS.(UN)
UNO I
30/3 M&R 31/3
S&P X

As verbally instructed by D.S.(UNO) a comparative statement showing comments received from Ministries concerned on (1) the Draft Declaration on Human Rights, (2) the Draft Covenant on Human Rights and (3) suggestions for implementation contained in Doc.. E/600, has been prepared and is placed below..

S&P Q

B.N.R. 2/4/48. D.M. 6.4.48

D.S.(UNO)

The table shows it would be difficult and dangerous to reconcile the various points of view by non-experts. Perhaps the best course would be for to convene a meeting of the Ministries concerned (Home, Law, EA & CR) and formulate all our proposals in precise language.

Yours sincerely
D. Sen
6-4-48

D.S.(UNO) W.M. 1/4
UNO I
30/3
I.S.(UN)

10.4.48

Reference notes dated the 10th April 1948 on prepage. A draft Office Memo. is submitted for approval. The draft has also been addressed to the Ministry of ~~Ex~~ I. & B. as they have also offered some comments on the draft covenant on Human Rights. The date and time convenient to Joint Secretary (C) ~~(Int.)~~ will be entered in the draft before it is sent to Issue Branch.

BDR 13/4/48

DM 13.4.48.

We shd. enclose a copy of the table we prepared. This would facilitate discussion. I have amended the draft accordingly

D.S(UN)

The Hqrs shd. also be invited after date & place have been fixed by JS(C). We may also inform Sir Dilip - he may attend if he so wishes. at least a weeks notice is desirable

S. Sen. 13/4

JS(C)

I regret I shall not be available for the discussion. Mr. C.S. Jha, who will replace me, is expected to return to Delhi next Saturday. His convenience should be consulted

R. A. Sakeen 13.4.48

Submitted with reference to notes above.

BDR 19/4/48 DM 19.4.48

D.S(UN)

J.S(C)

Mr. Jha may please indicate his convenience.

S. Sen 19/4

We may hold a meeting on Tuesday 27th at 11 am in Conference Room. We shd. convene the meeting in which the Hqrs. is represented. If the Hqrs. wants any other E.A. may also be invited.

19/4

D.S(UN)

UNO [illegible]

BDR 13/4/48

E.A. & C.R.

The table shd. have been typed while we were waiting for Mr. Thas return To type it now would delay matter So please issue amended draft. Also put up d/o draft to Mrs. Mehta & Sir Dalip Singh. all letters must issue by 12 noon 6 noon

S. Sen
19/4.

59) Issue

UNO I
19/4

A draft d/o. letter to ~~Mr~~ Mrs. Hansa Mehta and a d/o note to Sir Dalip Singh are submitted for approval

BNR
19/4/48.

DM
19.4.48

D.S(UN)

Issue. I assume that the letter & the minutes will be despatched this morning. Please formally reserve the Committee Room for this meeting. I was told yesterday that it would be available in the 27th from 10 a.m. to 2 p.m.

S. Sen
20/4

(60) Issue

FR D. 1375-UNO.I/48. (61)

Submitted with reference to S.no (60). The reply to Secretary-General's note at pp 83-84/corr. has already been delayed and it will perhaps not be advisable to postpone the Inter-ministerial meeting which has been called for on the 27th April to accommodate Mrs. Hansa Mehta.

2. The passport referred to in para 2 of the FR. has been received in P.V. Branch and necessary action will, no doubt, be taken by that Branch.

I agree

S. Sen
24/4

D.S(UN)
BNR 24/4
DM 24.4.48

DEPARTMENT/OFFICE.

File No.

Draft Letter / Memorandum / Telegram

Serial No.

1. Date of despatch No. Dated

2. List of enclosures

S. 5 (Large).

MFP—418 S&P—6767—(M-770)—9-1-47—1,00,000 Pads.

Ministry of EA. & CR.

D.No. 1415-UNO.I/48. (62)

D.No. 1436-UNO.I/48. (63)

D. No 1462-UNO. I/48 (64)

For information. (Our main file on the subject has been submitted separately to D.S.(UN).

No need to bother DS(UN). The meeting is now over

26/4/48

DM
27.4.48.

(65) + (66) Issues

Ministry of External Affairs &
Commonwealth Relations.

.....

Sub:- Human Rights Commission - Draft declaration and Covenant on Human Rights.

.....

The discussions during the last two sessions of the Human Rights Commission have crystallised into (i) a draft declaration of human rights, and (ii) a draft covenant on human rights. We have been asked (1) for our comments on the drafts and (2) our suggestions regarding the implementation of the covenant.

2. The documents have been examined in detail by the Ministries concerned in an inter-Ministry Committee.

3. The more important points are:-

(a) The draft covenant makes no distinction between aliens and citizens as regards the enjoyment of human rights. The inter-Ministry committee was unanimous that, as in the draft ~~Constitution~~ Constitution for India, certain rights ought to be restricted to citizens only, e.g., the right of freedom of speech and association, etc.

(b) Article 11 of the covenant is designed to prevent restriction on movement and residential segregation of persons within a State. It is, however, so drafted that loophole is left to Governments who may wish to act in a contrary way. For example, restriction on movement and segregation can be imposed under the Article 'in the general interest' which is a very wide term. This Article is important from the point of view of Indians outside India who are subjected to segregation. The committee was of the view that there should be complete freedom of movement and residence within a State except for reasons of security or for the prevention of epidemics.

(c) According to Articles 24 and 25 of the draft covenant on Human Rights acceding States cannot bind federal units in respect of matters within the latter's sphere. It is contemplated that they should make suitable recommendations to the

P.T.O.

federal units. Likewise, metropolitan powers are not expected to bind the Governments of the Colonies, Protectorates or Trusteeship territories. In our opinion this provision is both unsound in international law and mischievous. It would permit, for example, the Government of South Africa to ratify the convention and yet permit the Government of Natal to impose on Indians various kinds of segregation and restriction regarding housing and other municipal amenities. It will also enable the Government of the United States, should it so wish, to defend restrictions on ~~en~~ Negros on the ground that they came within the province of the individual States. It would also make the Covenant on Human Rights largely valueless for the large mass of people living in colonial countries who are at present subjected to such restrictions. The committee was, therefore, strongly of the view that accession of a State must automatically amount to undertaking obligations in respect of the entire territory irrespective of its internal ~~xxxxxxxx~~ Constitution.

IMPLEMENTATION :-

4. As regards implementation, there has been a suggestion for the establishment of an international court of human rights. The Human Rights Commission was, however, unable at its last session to arrive at a definite conclusion on this matter. It contented itself with pointing out the advantages and disadvantages of such a court. This question is , therefore, still left open and we have to express our opinion on it. The idea of the Commission seems to be to have a Standing Committee of experts who would screen petitions and applications received by the Secretary-General and take up cases requiring attention with the States concerned, not as an arbitrator but as a conciliator. The establishment of an international court of human rights is a suggestion in addition to the formation of this Standing Committee.

POINTS FOR DECISION :

5. H.P.M.'s orders are particularly solicited on the following points :-

(a) Whether the idea of a Standing Committee should be pursued ?

The/.....

The committee felt that the Standing Committee was a very good idea, at any rate to start with, but thought that one single Standing Committee in New York would not be enough. There ought to be regional committees, especially as in the atmosphere of New York petitions from Asiatic and African countries may not be given the weight they deserve.

My own view is that the Standing Committee supplemented by regional committees is a good idea and should be supported.

(b) Should there be an international court of human rights in addition to other machinery for their consideration and enforcement of human rights ? Two views were expressed in the inter-Ministry committee : (i) that in the present international alignment of powers, India is, more often than not, unlikely to get a fair deal and that, therefore, by accepting the jurisdiction of another international body like the international court of human rights we shall be making a commitment which may prove embarrassing in the event of complaints being made against us before international bodies. The sponsors of this view also feared that the international court of human rights, like the international court of justice, although theoretically impartial, will not be able to shake off the influence of power politics. (ii) The other view was that it is better that matters relating to human rights should go before a judicial body like the international court of human rights rather than before the General Assembly or any other organ of a political nature, where considerations of power politics are often the deciding factor.

My own view is that we should not object to the formation of an international court of human rights, since by supporting the establishment of such a body we shall hardly be undertaking substantially greater responsibilities and risk than are inherent in our membership of the U.N.Organization, which enjoins respect for human rights and fundamental freedoms. We should suggest, however, that such a court need not be set up in a hurry

P.T.O.

We may first try the machinery of the Standing Committee with regional committees and see what results are achieved.

(c) Should there be a provision regarding implementation in the Covenant ? This is really connected with the question as to what type of machinery for implementation there should be set up. If we agree that special machinery like the international court of human rights should be established to give its judgment on alleged violation of human rights, then there is no objection to making a provision to this effect in the draft Covenant. If, on the other hand, we do not wish to go further than the Standing Committee then the Covenant need not at present have any implementation clause.

(d) Should the individual have a right of petition to the United Nations in respect of violation of human rights ? Here again two different views were expressed in the inter-Ministry committee. One was that it would be dangerous to allow an individual, resident in a State, to petition to the U.N.direct. The other view was that unless we allow aggrieved persons to bring infringement of these rights to the notice of the U.N. the Covenant would become valueless since it cannot be expected that a State would bring such an infringement by itself to the notice of the U.N., nor is it very likely that other States, unless they want to pick up a quarrel with the State concerned, would care to do so on behalf of aggrieved person in such a State.

My own suggestion is that no one need be prevented from petitioning the Secretary-General, but the Standing Committee should take notice only of such complaints regarding violation of human rights as affect a community or a body persons generally and not of individual grievances which it is open to the individual to take before an ordinary court of justice in his own country.

6. Our examination of the draft Covenant shows that if it is amended so as to make certain provisions like those regarding freedom of speech applicable to citizens only, etc. it would be fully in accord with the funamental rights under the draft Constitution of India and that there need be no objection from India 's point of view to ratify such a Covenant. Should we

ratify the Covenant we would have to amend many our laws to some extent. We may also have to slightly enlarge the chapter on fundamental rights in the Constitution of India. The latter may be somewhat inconvenient as an amendment of the Constitution requires special procedure and is consequently much more difficult, but the committee felt that in view of India's past attitude on the whole subject we should proceed to shoulder this inconvenience.

Sd/- C.S.JHA.
29/4/48.
Joint Secretary (C)

P.P.S. TO H.P.M.

Has Sir B.N.Rau been consulted ? If not it is suggested that this be now done. Sir B.N.'s views on the problems raised in Mr. Jha's note would be particularly valuable.

Sd/- H.V.R. IENGAR.
30-4-48.

JS (C)

As the drafting committee was to meet on the 3rd May and Sir B.N.Rau was away in Simla, P.P.S. agreed that we should send our provisional comments to the Secretary-General on the lines of my note and thereafter consult Sir B.N.Rau. After Sir B.N.Rau's opinion (was received) H.P.M's orders will be taken, and Mrs. Hansa Mehta briefed for the third session of the commission commencing in New York on the 20th May.

Issue the D.O. below to Sir B.N.Rau.

Sd/- C.S.JHA.
3/5/48.

(61) Issue

Minutes of the inter-departmental meeting on the draft covenant on Human Rights etc. held on 27.4.48.

I have received a copy of the minutes of the meeting. I think it should be recorded that my objections to the ~~draft~~ declaration & the covenant are in the notes already sent by me. ~~But~~ I consider the whole approach is wrong in theory.

Dalip Singh

1. 5. 1948
(Kanwar Sir Dalip Singh)

D.S.(~~Mr.~~S.Sen)

JS(C) may see

S. Sen
1/5

Ltd -

In
1/5

D.1572-unro.I/48 (68)

For present information. A reply to our letter at Sno (67) may be awaited from Sir B.N. Rao.

DM.
5/5/48 5.5.48

S. Sen
5/5

D.1708-unro.I/48 (69)

FR For information. The views of the Govt. of India are at Sno.(66). It is suggested that a copy of the F.R. and its enclosure may be forwarded to the Ministries concerned for their information.

I agree

S. Sen
21/5

20.5.48.

29/5/48

P.S.V. 9A.

D.S.(UN)

Ministry of EA and CR
(EA Wing).

Ref. notes overleaf O.M. is put up for approval

BK
21.5.48
B.D.K
21/5/48

S. Sen
21/5

(70) Issue

D. Sen

Record (20 yrs)
B.D.K
3/6 AMS
3.6.

(!)

S. 1171-UNO-I/47

Copy.

TELEGRAM EN CLAIR.

From..... Indiadel, New York.

To..... Foreign, New Delhi.

No. LI-93

Dated 3rd (Received 4th) July 1947.

Human Rights Commission Meeting Geneva Twentyfifth August to eighth September.

E.A. & C.R. DEPARTMENT/~~OFFICE~~
U.N.O.I. Branch.

File No.
Serial No.

(2)

~~Letter~~
Draft ~~Memorandum~~
Telegram

En clair.

1. Date of despatch.
2. List of enclosures.

No. 1509 - Cipher

Dated 11-7-47

From... Foreign, New Delhi.

To..... Indiadel, New York.

// Please telegraph agenda of next session of Human Rights Commission meeting Geneva //

....

(3)

D1210-UNO

~~8623~~

TELEGRAM EN CLAIR

From.....Indiadel, New York.
To.....Foreign, New Delhi.

No. L 199 T.D.O. 1450
Dated 12th (recd. 13th) July 1947 T.O.R. 1010

.....

Your telegram 1509-UNO-1 July eleventh Human Rights Commission agenda contained in E/CN-4/22 sent to you by this weeks bag.

.....

UNO(I) Branch:(2) JS(C): DS(C): & US(C):

PJN
13/7/47

N.O. No. F.5(68)-UNO.I/47.

New Delhi,
18th July, 1947

Dear Mrs. Hansa Mehta,

Herewith a copy of the provisional Agenda for the second Session of the Commission on Human Rights.

I have booked your passage by the T.W.A. leaving Bombay on 23rd August. I shall be very grateful if you could let me know when you will be leaving Delhi for Bombay.

Yours sincerely,

(M. Gopala Menon)

Mrs. Hansa Mehta,
Constitution House,
Curzon Road,
New Delhi.

Enclosure to S. No. (4).

United Nations / Nations Unies

ECONOMIC AND SOCIAL COUNCIL / CONSEIL ECONOMIQUE ET SOCIAL

UNRESTRICTED

E/CN.4/22
3 July 1947

ORIGINAL: ENGLISH

5

COMMISSION ON HUMAN RIGHTS

PROVISIONAL AGENDA FOR THE SECOND SESSION OF THE COMMISSION ON HUMAN RIGHTS

1. Opening of the session
2. Adoption of Rules of Procedure
3. Communications addressed to the Commission
4. Invitation to the officers of the Commission on the Status of Women
5. Report of the Drafting Committee
6. Report of the Sub-Commission on Freedom of Information and of the Press
7. Year-Book on Human Rights
8. Programme of Future Work
9. Other Items
10. Adoption of Report of Commission to the Economic and Social Council

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(5)

Deptt. of E.A. & C.R. (India)

(6)

Minutes of the meeting held in the E.A. & C.R. Department on Wednesday, 30th July, 1947 at 10-30 a.m. to consider the brief for the Second Session of the Commission on Human Rights.

Present

1. Mr. R.R. Saxena, Joint Secretary, E.A. & C.R. Department, Chairman.
2. Mrs. Hansa Mehta, India's Representative on the Human Rights Commission.
3. Mr. C.S. Jha, O.B.E., I.C.S., Joint Secretary E.A. & C.R. Department.
4. Mr. M.A. Hussain, I.C.S., Deputy Secretary, I & B Department.
5. Mr. G.V. Bedekar, I C.S., Deputy Secretary, Home Department.
6. Mr. M. Gopala Menon, Under Secretary, E.A. & C.R. Department.

The Agenda for the Second Session of the Commission on Human Rights was taken up for discussion.

Item 1. Opening of the Session

No brief was considered necessary.

Item 2. Adoption of the Rules of Procedure - No brief.

Item 3. Communication addressed to the Commission - No brief.

Item 4. Invitation to the officers of the Commission on the Status of Women - No brief.

Item 5. Report of the Drafting Committee - Mr. Jha remarked that the Secretariat Draft was on the whole superior to the British Draft outline of International Bill of Rights.

The British and Secretariat Drafts were discussed article by article.

Article 3. It was agreed that the

U.K..... ...

U.K. Amendment Article 3 may be accepted.

Article 5 of the British Draft was considered to be an improvement on the Secretariat Draft.

Article 9. Mrs. Hansa Mehta was asked to get further clarification on this Article but it was decided to omit the words "in the interest of national welfare" and to add in the interest of public health.

Article 10. This was considered harmless.

Article 16. Article 14(3) of the U.K. Draft was considered more suitable to Articles 16 and 17 of the Secretariat Draft.

Article 18. This must be omitted as this Commission is not concerned with Social Rights.

Article 22. Article 22 read with Article 45 was considered unobjectionable.

Article 30 was considered important.

Article 31. Mrs. Hansa Mehta was requested to get clarification as to the meaning of the words "Public Functions". The clause regarding appointment to civil services by competitive examination should be omitted.

Articles 32 and 33. The Home Department was requested to examine these two articles and furnish a brief on the same as the matter contained was considered controversial and technical.

Article 46. There was considerable discussion on this article specially regarding the question of the rights

of a .....

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of a minority to use their own language before the courts and other authorities of the State. It was decided finally to accept this draft.

On the question of implementation of the International Bill of Rights and action against member States for infringment of Fundamental Human Rights or for discrimination it was agreed that the brief given on Item 7 for the previous Session of the Human Rights Commission should be broadly followed.

---- Sd/ M.S. Menon
U.S.(C)

P/37-39
Corr
F. 15(3)-CC/46 Vol. II

(1) Mrs Hansa Mehta
~~Smt. Hansa Mehta~~ 16, Altamount Road,
Bombay

(2) C. R. Krishnamachari (Shri C.S. Jha I.C.S. O.B.E.)

(3) P & T Department (Shri M.A. Husain I.C.S.)

(4) Home Department (Shri B.V. Keskar I.C.S.)

Despatched 31/7
Issued MBM 31/7

E.A. & C.R. Dept. ~~U.O.~~ U.O. No. 5(68)-UNO I/47
Dy 31.7.47

(6)

D1350-ummsf 49

TELEGRAM ENCLAIR 9149

From..... Indiadel, New York

To..... Foreign, New Delhi

No. L-211

Dated 24th (received 25th) July 1947. T.O.O. Nil
T.O.R. 1230

Following from Mrs. Roosevelt, Dr. Chang and Dr. Malik for Mrs. Hansa Mehta. Begins.

Please advise soonest possible your preference whether commission human rights session commencing 25th August should be held Geneva or Lake Success. Please rep to Secretary General United Nations Lake Success. Ends.

.....

PS TO HM: UNO(I) BR(3) (INCLUDING ONE FOR MRS. MEHTA)
SG FS JSC US(C)

E.A. PN
25/7/47.

Sent Rec'd 28/7 11-20 pm

Issue advance 28.7.47

Work 28/7

(7)

(10)

E.A./C.R. DEPARTMENT/~~OFFICE~~

U.N.O.I Branch.

File No.
Serial No.

Letter
Draft ~~Memorandum~~
Telegram

Despatched K.R.Shanne 28/7

1. Date of despatch
2. List of enclosures

No. 1645-UNOI Enclair Dated 28/7/47

India del
New York

// your telegram No L-211 dated 24th July

For Secretary General from Miss Hansa Mehta

I have no preference. Both places suitable. Please telegraph early place finally selected

Mr Miss 28/7 11-15 pm

C.d. dar 28/7 (A-18)

S. (6)

Mr A 28/7
D NS

for holding

Human Rights

Commission Sessions //

S-5 (Small).

MFP—226 S&P—6767-A—(M-636)—13-7-45—200,000 Pads.

B. I. Cable. 659 No.

INDIAN POSTS AND TELEGRAPHS DEPARTMENT.

Recd. at ____ H. ____ M.	Sent at ____ H. ____ M.	Office Stamp.
From	To	D1867-UNO[illegible]/47
By	By	

XF 111- P R 0176/27 NEWYORK 26 OCS VIA WU IND GOVT EZ 24

FOREIGN. NEWDELHI =

L -214 MY TELEGRAM L -211 JULY 24 KINDLY TELEGRAPH IMMEDIATELY PREFER

GENEVA OR LAKE SUCCESS HUMAN RIGHTS COMMISSION MEETING = INDIADEL =

MGIPAD —38.'00 Blks.

(9)

(12)

EA&CR. DEPARTMENT~~OFFICE~~. (2nd Re)
U.N.O.I.Br.

File No.
Serial No.

~~Letter~~
Draft ~~Memorandum~~
Telegram

1. Date of despatch.
2. List of enclosures.

No. 1705 Endeavour-UNO I Dated 4/8/47

Indiadel
New York.
IMPORTANT.

Our telegram
No 1645-UNO.I July 28th.

immediately
Please telegraph
Vienne
~~Bern~~ Vienne.
Human Rights Commission
Human Rights Commission

Telegram Enclair (10)

No.9749. (13)

From.. Indiadel, New York.
To.... Foreign, New Delhi.
No.L-225.
Dated 4th (recd: 5th)August 1947-

T.O.O. 1700
T.O.R. 1730

Your telegram 1705-UNOI August 4th Human Rights Commission Meeting postponed until earliest possible date following adjournment of General Assembly Meeting expected to take place Geneva.

.....

PS to HM., UNOI BRANCH(3).,SG.,FS., JS(X).,JS(C).,JS(E).,
US(C).,C.R.Wing-Secretary and Joint Secretary., P.S.V.(2)
Cabinet Secretary., and Home Secretary.

P.E.W.(20)*
Recd:August 6th.

E.A. & C.R. DEPARTMENT/OFFICE. (India).
U.N.O.I.Branch.

File No.
Serial No.

(14)

(11)

D.O. Letter
Draft ~~Memorandum~~
~~Telegram~~

1. Date of despatch.
2. List of enclosures.

No. F.5(68)-UNO.I/47. Dated 8/8 August 1947.

To

Mrs. Hansa Mehta,
16, Altamount Road,
Bombay.

Subject:- Second Session of the Human Rights Commission.

Dear Mrs. Hansa Mehta,

In continuation of the E.A. Department u.o.note No. 5(68)-UNO.I/47 dated the 31st July 1947, I am desired to inform you that the second Session of the Human Rights Commission has since been postponed and ~~is expected~~ will ~~to~~ take place in Geneva sometime by the end of November 1947. The exact date on which the Session will meet

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will be communicated to you in due course.

In the meantime the passage booked for you on the 23rd August is being cancelled.

Yours sincerely

Sd. N. S. Nair

U.S.(C).

S-5 (Small).
MFP—326 S&P—6767-A—(M-609)—26-7-46—200,000 Pads.

D1537-0 (W.D.)

T16

(12)

UNOI Br. 7/8 Unk 7/8 1526

TELEGRAM EN CLAIR 9779

From..... Indiadel New Delhi
To..... Foreign, New Delhi
No. L-227
Dated 5th (and received 6th) August 1947. T.O.O. 1100
T.O.R. 1130

Following from Secretary General for Mrs. Hansa Mehta. Begins:-

Have Honour inform you Economic and Social Council decided 31st July that second session human Rights Commission will meet Geneva immediately following second regular session General Assembly. Ends.

.....

UNOI BR(3) WITH 1 COPY FOR TRANSMISSION TO MRS HANSA MEHTA FS JSK JSC USC & COPY TO HOME DT.

E.A. 7/8/47

E. A. & C. R. DEPARTMENT/~~OFFICE~~

U. N. O. I. Branch.

File No.

Serial No.

(13)

Draft ~~Letter~~ ~~Memorandum~~ Telegram

En Clair.

1. Date of despatch.

2. List of enclosures.

No. 1835-UNOI *Dated* 11/8/47

From... Foreign, New Delhi.

To .... Mrs. Hansa Mehta,

16 Altamount Road, Bombay.

Following from Secretary General for you. Begins. Have honour inform you Economic and Social Council decided 31st July that second session Human Rights Commission will meet Geneva immediately following second regular session General Assembly. Ends.

Copy to C.R.Wing.

Sd. H. C. Mehta.
U.S.(C)

(14)

No. 50/11/47-Poll(EW).

D 1788-UNO/47

GOVERNMENT OF INDIA.

HOME DEPARTMENT.(India).

New Delhi-3; the 26th August 1947.

OFFICE MEMORANDUM.

With reference to the External Affairs and Commonwealth Relations Department u/o No.5(68)-UNO.I/47, dated the 31st July 1947, the undersigned is directed to forward a brief on articles 32 and 33 of the draft outline of International Bill of Rights.

Doc. E/CN.4/AC1/3 Slip B

(F.Singh)
Assistant Secretary to the Government of India.

The External Affairs and Commonwealth Relations, Department.

Encl. to S. (14)

(19)

A brief on articles 32 and 33 of the Draft Outline of International Bill of Rights (Prepared by the Division of Human Rights).

Article 32

We are already following the principles set out in this article except in so far as the deprivation of nationality by way of revocation of a certificate of naturalisation is concerned. Certificates of naturalisation are revoked for certain specific reasons, e.g. cases of disaffection or disloyalty to the state; cases where certificates were obtained by false representation or fraud or by concealment of material circumstances, etc. - cf. section 7 of the British Nationality and Status of Aliens Act, 1914. Obviously, when recourse is to revocation of certificates of naturalisation in such cases, we cannot agree to revocation being conditional on the reversion of the revokee to his former nationality or on the acquisition by him of another new nationality. Although, therefore, we agree generally with the principles set out in article 32, we would reserve our right of revoking certificates of naturalisation. It is, however, suggested that the appropriate course for achieving the object of clause 3 of this article would be to have provision made in the law of each state that its nationals will automatically revert to its nationality on their ceasing to be the subjects of a foreign State in consequence of the revocation of their certificates of naturalisation by that State or in similar circumstances, rather than to make the right of a State to revoke certificates of naturalisation conditional, as proposed in the article.

Article 33.

Foreigners can at present be expelled under the Foreigners Act, 1946 (XXXI of 1946), which does not provide for any judicial decision or assignment of reasons for the action taken. These powers have been taken purposely because it would otherwise be very

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difficult in practice to expel an undesirable foreigner. In most cases, a foreigner has to be expelled for security reasons and the evidence on which it is decided to take this action is of confidential nature, the source of which it is not in the best interest of the State to disclose in a court of law. Apart from this, if the "expulsion" is to be effective it has to be carried out immediately or with as little delay as possible. If legal proceedings have to be instituted in every such case, it will be very difficult to get rid of an undesirable foreigner. It may also be mentioned that it is a universally accepted principle that a foreigner can stay in another country only for such time as his presence is not objected to by that country. In other words, no country can afford to surrender its right to expel a foreigner if he comes to adverse notice or indulges in undesirable activities. These are matters which can properly be adjudged by the executive government & cannot be left to the decision of a court of law. We consider, therefore, that it is, and should continue to be, the prerogative of the state to issue passport to its nationals or to refuse, and to admit foreigners or refuse admission or to expel them, and that the proposed limitation of judicial decision, etc., is neither practicable nor in the best interest of the state. Accordingly, we cannot accept the principle set out in article 33.

Ministry of E.A.&C.R. DEPARTMENT/OFFICE
UNO.I.Branch.

D.O. Letter
Draft ~~Memorandum~~
Telegram

File No.

Serial No.

1. Date of despatch

No. F.5(68)-UNO.I/47 Dated 6th September 1947.

2. List of enclosures

Mrs. Hansa Mehta,

16, Altamount Road,

Bombay.

Subject:- Second Session of the Human Rights Commission of the Economic and Social Council.

Dear Mrs. Hansa Mehta, Mr. M. G. Menon

In continuation of ~~my~~/ letter No. F.5(68)-UNO.I/47, dated the 13th August 1947, I am desired to forward herewith the undermentioned papers for your information.

(i) A brief on articles 32 and 33 of the Draft Outline of International Bill of Rights (Prepared by the Division of Human Rights); and

(ii) An extract from the brief given to our Delegation to the 5th Session of the Economic and Social Council regarding Report of the first session of the Sub-Commission on Freedom of Information and of the Press.

2. As regards item No. 7 of the Provisional Agenda for the Second Session of the Commission on Human Rights, I am to add for your information that Sir B.N.Rau is writing a note on Human Rights in India for incorporation in the next edition of the Year -Book.

Yours sincerely,

Sd/ Bal Kishan
A.S.(C).

Copy with a copy of the brief on articles 32 and 33 of the Draft Outline of International Bill of Rights forwarded to the

(1) Ministry of Information & Broadcasting
(2) C.R.Wing

S. 5. (Large).
MFP—418 S&P—6767—(M-770)—9-1-47—1,00,000 Pads.

22

for information in continuation of the E.A. & C.R. Deptt. u.o. No. F.5(68)-UNO.I/47, dated the 31st July 1947.

By order, etc.,

Sd/ Bal Kishan
A.S.(C).

COMMONWEALTH RELATIONS OFFICE (16) External DEPARTMENT. 23

D(972-0 NO 1747)

EXPRESS LETTER (AIR MAIL).

(This is an original message, sent by air mail to save telegraphic expense, but intended to be treated on receipt with the same expedition as if it had been telegraphed.)

From Secretary of State

To Government of India, Department of External Affairs and Commonwealth Relations

Dated 8th September, 1947.

No. Ext.7976/1947.

The Government of India will doubtless have received from their Representative in New York a copy of United Nations document E/CN4/21 containing the Report of the Drafting Committee to the Commission on Human Rights in which reference is made to the documents submitted to the Committee by the United Kingdom Representative on the Commission.

2. In this connection, there are enclosed the following documents which, after considering the Report, it has been decided should be submitted by the United Kingdom Representative on the Commission at its next meeting:-

(a) the text of three new articles (8a, 10(a) and 10(b) for insertion in the draft of an International Bill of Rights;

(b) a written statement by the United Kingdom Representative, to which is annexed the draft of a possible statement by the Commission.

3. It is contemplated that these documents will be communicated to the United Nations Secretariat for /circulation

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circulation to the members of the Commission on Human Rights, some weeks before the next meeting of the Commission. In the meantime, it would be appreciated if they could be treated as confidential.

(The issue of the above has been duly authorised)

John Humphrey

Encl. to S. (16)

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ANNEX I

Text of new Articles for insertion in the draft of an International Bill of Rights

Article 8(a)

"It shall be illegal for any person to be subjected to:-

(a) torture in any form;

(b) any form of physical mutilation or medical or scientific treatment or experimentation against his will".

Article 10(a)

"(1) No person shall be convicted of, or punished for, crime save by judgment of a competent tribunal and in conformity with the law.

(2) Any person accused of having committed a crime shall be entitled:-

(a) to a full hearing of his defence to the charge and of any plea which he may make in mitigation;

(b) to hear the testimony of all witnesses;

(c) to compulsory process for securing

(1) the attendance of witnesses whom he wishes to call and

(2) the production of relevant documents.

(d) to consult with and to be represented by counsel".

Article 10(b)

"No person shall be prevented from having access to the courts or entering into lawful contracts, save in the case of:-

(a) minors;

(b) persons of unsound mind;

(c) persons undergoing imprisonment or subject to disabilities resulting from a conviction.

ANNEX II

Draft statement to be submitted by the Delegate of the United Kingdom prior to the next meeting of the Human Rights Commission.

1. There appear to be three possible forms in which the Human Rights Commission can present its first recommendations to the General Assembly.

(a) They can take the form of a Human Rights declaration to be adopted by an Assembly resolution, and nothing more.

(b) They can take the form of a convention or International Bill of Rights to be recommended for adoption by members of the United Nations, and no declaration.

✓ (c) They can take the form of a declaration plus a convention or International Bill of Rights, both introduced by an Assembly resolution which explains the relationship between the two.

2. For the reasons given below either (b) or (c) would be a proper course for the Commission to adopt whereas course (a) might easily do more harm than good and is highly undesirable.

3. Any declaration which ex hypothesi is not a convention will be framed in terms of short principles and will consist of a statement of ideals and aims which the United Nations will endeavour to promote and secure. It can thus provide a valuable basis for the progressive extension and refinement of human rights, through education, teaching and its moral influence on mankind. But its phraseology will of necessity be general and lacking in detail, and it is therefore probable that no country will be able to observe many of its provisions literally and absolutely.

4. It is therefore clear that such a declaration, by itself, cannot create international obligations on the members of the United Nations. Consequently, if there is a declaration and nothing else, there can be no procedure for enforcement; nor can there be any provisions with regard to petitions or anything else of a like nature. The Government of the United Kingdom, and most other governments will be quite unwilling to contemplate any attempt to enforce a declaration which is only in broad general terms, and which creates no actual legal obligations of any kind. They would not agree to any procedure for the consideration of petitions based on an instrument which constitutes ideals and aims, and does not purport to constitute any obligation. It is only possible to consider methods of enforcement, including appeals to the General Assembly, and the procedure for dealing with petitions etc. in relation to an instrument which creates obligations precisely defined and which can, in case of dispute, be interpreted by the International Court of Justice. Course (a) cannot, however be considered to be an adequate fulfilment of the aims expressed in the Charter. While it is to be hoped that such a declaration of aims ideals may ultimately, by its persuasive force, have a considerable influence in ameliorating the lot of mankind there is a real danger that if it stands by itself, it may lead men to believe that more progress had been achieved than would in fact be the case.

5. Course (b) was the one which was proposed by the United Kingdom delegate at the meeting of the Drafting Group. The drafts then submitted by the United Kingdom contain Bill of Rights in the form of a convention and also the elements of a declaration, since there is inserted into the draft Assembly resolution a number of principles which should be accepted as aims but which cannot yet take the form of precise legal obligations. The Government of the United Kingdom still consider that this is a possible and proper course.

6. Course (c) is one which might well form a compromise between those who most favour a declaration and those who most desire a convention. Under this course, everything that can immediately be made the subject of precise obligations would be set forth in the Bill of Rights and be made subject to a suitable enforcement procedure. The declaration would then contain (1) certain broad principles which were formulated in terms of precise obligations in the Convention and (2) a statement of further ideals and aims which were not susceptible of immediate formulation as legal obligations.

7. It is impossible to exaggerate the importance of adequately safeguarding human rights and fundamental freedoms. The maintenance of these rights and freedoms, as we know from our own history, forms an essential curb on the ambitions of those who are in power in the individual states. They provide the means through which the individuals in each state, enjoying the rights of full information and of free speech and criticism, can check the reckless courses in which those in power are sometimes prone to plunge their populations. Therefore the establishment of human rights and fundamental freedoms as part of international law, with obligations on each state to observe and maintain them, is an essential safeguard against the danger of war resulting from the ambitions and desires for power by individual states.

8. In this connection attention should be paid to a small paper presented by the eminent Belgian, Professor Charles de Visscher, to the Institute of International Law for discussion this year at Lausanne entitled "The Fundamental Rights of Man as the basis for the restoration of International Law". He rightly points out that:-

> "respect for human personality... becomes... the great restraining influence on the Executive; ..... it brings about that just balance which prevents the Executive from degenerating at home into an instrument of tyranny, and abroad into an engine of aggression and conquest ..... The key of the problem therefore lies above all in the relations between man and the State, in an adjustment of the behaviour of the individual towards the body politic, and in the intellectual and institutional counter-weights which in truly democratic countries preserve the Executive from those deviations which arise from the pursuit of power for its own sake.....
>
> "This indissoluble connexion between human liberties and the creation of an international order founded upon law have been thrown into tragic relief during the last 25 years. The totalitarian ideaologies, built on a perverted morality, made every effort to sanctify the enslavement of human personality to the Nations State's ideal of power. In absolute contradiction to that

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'rule of law', which in countries of liberal tradition safeguards individual rights against the whim of the Executive, national-socialist law was marked by the removal from the constitutional statutes of all mention of those fundamental rights of man which are beyond the reach of political decisions by governments".

Professor de Visscher is one of the Judges of the International Court at the Hague, and the whole of the paper from which these quotations are taken deserves careful study by the Commission.

9. Further, another point made by Professor de Visscher is in full accord with the United Kingdom draft, namely, that human rights and fundamental freedoms are really based on the law of nature which was the foundation of the law of nations, which was again the foundation of international law. This idea is expressed today in Article 38 of the Statute of the International Court by "the general principles of law recognised by civilised nations." To a large extent, therefore, the provisions of the United Kingdom draft of an International Bill of Rights or convention are part of international law already. Moreover, most of its provisions are declaratory of what may be described as the general principles of the law of members of the United Nations in the field of the rights of man. A survey of the constitutions of most countries shows that, in the matter of of the recognition of the fundamental rights of the individual, there is already a wide uniformity. This applies in particular to provisions safeguarding personal liberty, freedom of religion, of speech, of opinion, and of association, and of equality before the law. The United Kingdom draft is of course based on British practice, and will therefore have to be amended to take account of the practice in other countries, but many of the principles embodied in it are already part of international law. But by reason of lack of precise definition, and of any procedure for dealing with cases where they are violated, they form a part of international law today in a most imperfect manner. In the opinion of His Majesty's Government these facts were recognised by the Charter itself, and the time has now come to ensure these rights and freedoms by defining them precisely in a convention which will have binding force on all nations which ratify it. To fail to do so would cause bitter disillusionment to the hopes which millions of our fellow-men have placed in the Human Rights Commission, and would thus be a step backwards rather than progress.

10. If the Commission decides to adopt course (c) it is desirable that the nature and purpose of each document should be clearly stated. This will be of value not only in the actual task of drafting the two documents, but also in making clear the relationship between them when they have been approved by the General Assembly. A draft statement on these lines is accordingly annexed hereto. It is suggested that in the event of course (c) being adopted, this draft statement should be discussed and adopted, with any necessary amendments, by the Commission. Thereafter it might be submitted for adoption, in a suitably modified form, by the General Assembly when the Draft Convention and the Draft Declaration are submitted to it.

DRAFT STATEMENT FOR CONSIDERATION BY THE COMMISSION ON HUMAN RIGHTS.

1. The task of promoting human rights and fundamental freedoms has two aspects, first, the consolidation of the progress which has already been achieved, so that the barbarities of Nazi Germany may be outlawed for all time; and, secondly, the progressive extension and refinement of human rights and freedoms for all men everywhere.

2. It is not possible for a single document to serve both these purposes. The Human Rights Commission has therefore prepared two documents, one a Declaration of Human Rights, and the other an International Bill of Human Rights.

3. The Declaration is designed to promote the progressive extension and refinement of human rights and freedoms. It must therefore, of necessity, be expressed in terms of general principles which answer to the aspirations of all men everywhere. Those principles represent the goal towards which mankind is striving, and it may be hoped that their definition by the United Nations will hasten the day when they will be generally accepted and universally applied. But at the present time, and probably for many years to come, most of them must in practice be subject to many exceptions whose enumeration in the Declaration itself would destroy its whole purpose. The Declaration therefore creates no legal obligations, and none of its provisions can be enforced. It must rely for its efficacy, on teaching and education and on the progressive realisation of man's social and economic well-being.

4. Certain of these general principles however can and should at once be expressed in terms of binding legal obligations if the progress already achieved is to be consolidated. These are the rights which are immediately capable of precise definition and which are already included in the constitutions of most of the members of the United Nations. The example of Nazi Germany shows what results can flow, internationally as well as internally, from the refusal by a Government to recognise elementary human rights and fundamental freedoms. The International Bill of Human Rights is therefore designed to consolidate and codify the general principles of law of the members of the United Nations in the matter of the rights of man by creating legally binding and internationally enforceable obligations on those United Nations which adhere to it. For this reason, its scope is less far-reaching than that of the Declaration of Human Rights, but other parts of the Declaration may from time to time be embodied in the form of Conventions.

5. Thus, while the Declaration cannot, by its very nature, create any legal obligations, the International Bill of Human Rights will, from the moment of its coming into force, form a part of international law.

FAIRED

CONFIDENTIAL

D.O.No. F.5(68)-UNO.I/47. Ministry of E A & C.R
NEW DELHI, 3.

(17)

The 13th October, 1947.

Subject:- Second Session of the Human Rights Commission.

Dear Ms. Kehla,

In continuation of Bal Kishan's d.o. letter No. F.5(68)-UNO.I/47, dated the 6th September 1947, I am forwarding for your advance information a copy of an express letter from the Secretary of State for Commonwealth Relations, London, No. Ext.7976/1947, dated the 8th September 1947, together with its enclosures. The proposed amendments to the Draft of an International Bill of Rights are under the consideration of the Government of India and their comments, if any, will be communicated to you in due course.

2. While you were here in connection with the Interdepartmental meeting held in the External Affairs & Commonwealth Relations Department on the 30th July 1947, to consider the brief for the Second Session of the Human Rights Commission you expressed a desire to visit

Denmark .....

Denmark and Sweden after the meeting of the Commission which will take place sometime in the first week of December 1947 in Geneva. Please let us know whether you still desire to visit these countries and if so, for how long, and what are the facilities which you would like to be provided by this Ministry. We could, if you wish, ask the High Commissioner for India in London to afford you such facilities as may be possible.

Yours sincerely,

Sd/- R.R.Saksena

To

Mrs. Hansa Mehta,

16, Altamount Road, BOMBAY.

'P'

Copy with a copy of express letter from Secretary of State for Commonwealth Relations, No.Ext.7976/1947, dated 8th September 1947 and enclosures forwarded to

(1) The Ministry of Information & Broadcasting,
(2) The Ministry of Home Affairs,
(3) The C.R.Wing of the Ministry of External Affairs and Commonwealth Relations,

for favour of comments, if any, at an early date.

By order, etc.,

Sd/- R.R.Saksena

Joint Secretary to the Govt. of India.

FAIRED

BY AIR MAIL

D.O.No. F.5(63)-UNO.I/47.

Ministry of External Affairs and
Commonwealth Relations,
New Delhi 3.

(18)

The 13th October, 1947.

Dear K. Krishna Menon,

As you probably know the second Session of the Human Rights Commission of the Economic and Social Council is likely to take place sometime in the first week of December 1947 in Geneva. Mrs. Hansa Mehta who is our Representative on the said Commission has asked for a legal adviser to assist her on the Commission. It is doubtful if it will be possible for us to depute a competent legal adviser from India specially to assist her and we should be grateful if you will kindly let us know if you can suggest anyone in your Office who could be utilised in this capacity.

Yours sincerely,
Sd/- R.R.Saksena

To

V.K.Krishna Menon, Esquire,
High Commissioner for India
in London.

"PURI"

United Nations **Nations Unies**

ECONOMIC AND SOCIAL COUNCIL **CONSEIL ECONOMIQUE ET SOCIAL**

UNRESTRICTED

E/CN.4/22/Rev.1
17 September 1947

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

PROVISIONAL AGENDA FOR THE SECOND SESSION OF THE COMMISSION ON HUMAN RIGHTS

1. Opening of the session
2. Invitation to the officers of the Commission on the Status of Women
3. Communications
4. Report of the Drafting Committee
5. Report of the Sub-Commission on Freedom of Information and of the Press
6. Report of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities
7. Year-Book on Human Rights
8. Consideration of the Provisional Questionnaire formulated by the Trusteeship Council
9. Programme of Future Work
10. Other items
11. Adoption of the Report of the Commission on Human Rights to the Economic and Social Council.

Ministry of EA. & CR.

DEPARTMENT/OFFICE

UNO. I. Branch.

File No.

Serial No.

D.O. Letter

Draft

Telegram

1. Date of despatch.

2. List of enclosures.

No. F.5(68)-UNO.I/47. Dated 28th Oct. 1947.

To

Mrs. Hansa Mehta,

16, Altamount Road,

Bombay.

Subject:- Second Session of the Human Rights Commission.

Dear Mrs. Mehta,---

In continuation of my letter No. F.5(68)-UNO.I/47, dated the 13th October 1947, I ~~am desired to~~ forward herewith, a copy of document No. E/CN.4/22/Rev. 1, containing the revised provisional agenda ~~for~~ of the Second Session of the Commission on Human Rights, for your information in case a copy

35

has been
~~is~~ not received by you direct from the
United Nations Sectt. According to the latest calendar received by us the Commission will
meet at Geneva on the 1st Decr. 1947.

Yours sincerely

Sd. R. R. Saksena.

J.S.(C).

S-5 (Small).
MFP—228 S&P—6767-A—(M-636)—13-7-45—200,000 Pads.

D 2382-UNO/47

11 Aldwych Rd
Bombay 36.
23.10.47.

(21)

Dear Mr. Saksena,

I am in receipt of your letter dated the 13th and the proposed amendments to the Draft of an International Bill of Rights. Is the meeting of the Human Rights Commission finally fixed for December in Geneva? If the meeting is to be in Geneva then I would like to go to Denmark after the meeting. Sweden will be too cold in December.

You will please let me know in good time as to when I am expected to leave India.

Yours sincerely,
Jawaharlal

(22)

D2391-UNO[illegible]

14078

37

Telegram En Clair
From ..... Hicomind, London
To ..... Foreign, New Delhi
No. 3396
Dated 22nd (recd 23rd) October 1947

T.O.O. 1735
T.O.R. 1100

(18)

Reference Saksena's demiofficial letter No. F5(68)-UNOI/47 13th October. High Commissioner will be glad to depute legal adviser for Mrs. Hansa Mehta who will represent India at Human Rights Commission.

- - - - - - - -

PS to PM (2) UNOI Br (3) SG JSX JSE JSC CR Wing (Secy & Jt Secy) Cabinet Secy Min Home Affairs (2)

C.P.*
23/10

(23) D.2448-unro.I/47

United Nations
ECONOMIC AND SOCIAL COUNCIL

Nations Unies
CONSEIL ECONOMIQUE ET SOCIAL

UNRESTRICTED
E/CN.4/24
1 October 1947
ORIGINAL: ENGLISH

38

COMMISSION ON HUMAN RIGHTS

SECOND SESSION

Consideration of the Provisional Questionnaire Formulated by the Trusteeship Council (Item 8 of the Provisional Agenda.)

1. Under Article 88 of the Charter of the United Nations, the Trusteeship Council shall formulate a questionnaire on the political, economic, social and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such a questionnaire.

2. On 25 April 1947, in its First Session, the Trusteeship Council approved a Provisional Questionnaire (T/44) and resolved to transmit it to the Economic and Social Council for advice and comments on those sections which deal with subjects of special concern to it. The Economic and Social Council, at its Fifth Session, considered the Provisional Questionnaire and requested the Secretary-General to place the relevant sections of the questionnaire upon the agenda of appropriate Commissions of the Economic and Social Council for their preliminary examination and comment (E/P.V.119, page 86).

3. Accordingly, the Commission on Human Rights is asked to examine the questionnaire to the extent that its items come under the terms of reference of the Commission and to report to the Economic and Social Council the results of its examination.

4. The Trusteeship Council, in approving the questionnaire, emphasized its provisional nature. It was transmitted to the administering authorities concerned as the basis for their first annual report on trust territories on the understanding that it will be revised and adapted, if necessary, to specific trust territories, at the November 1947 session of the Trusteeship Council.

5. It is noted that there will be no opportunity for the Commission on Human Rights to examine the questionnaire before the November 1947 session of the Trusteeship Council and that there will be no opportunity for the Economic and Social Council to take further action on this matter prior to that session of the Trusteeship Council.

/6. The Commission

6. The Commission on Human Rights may find it appropriate both to examine the questions already contained in the Provisional Questionnaire formulated by the Trusteeship Council and to suggest the insertion of additional items.

7. (a) Among the questions already contained in the Provisional Questionnaire the Commission on Human Rights may wish to consider, in the first place, questions 136-148 which are contained in "Part G. Social Advancement" under the heading "Human Rights and Fundamental Freedoms".

(b) In addition to the questions marshalled under the heading "Human Rights and Fundamental Freedoms", the Commission may find that also the following questions are relevant to matters which are a primary concern of the Commission on Human Rights: 3, 8, 9, 10, 11, 24, 28 to 34, 43, 60, 61, 62, 80 (d and g), 114, 121 to 124, 127, 155, 161, 166, 235, 238.

(c) In addition to the questions enumerated in a and b, the Provisional Questionnaire contains additional items which have a certain though more remote bearing on the subjects coming under the terms of reference of the Commission on Human Rights. The Commission may therefore wish to examine and comment upon the questions coming under this group. They are: Numbers 7, 21, 25, 26, 27, 39, 40, 42, 45, 83, 84, 87, 117, 119, 126, 128, 207 to 218.

(d) It will be noted that questions 132-135 of the Provisional Questionnaire which appear under the heading "Status of Women" have not been included among those mentioned under (a) (b) (c) above, because these items will be referred to the Commission on the Status of Women.

Ministry of EA. & CR.

~~DEPARTMENT/OFFICE~~

UNO.I.Branch.

File No.

Serial No.

(24)

~~Letter~~

Draft ~~Memorandum~~

Telegram

En clair.

No. 24744 N.I Dated 31/10/47.

1. Date of despatch.

2. List of enclosures.

From.... Foreign, New Delhi.

To..... Hicomind, London.

Your telegram 3396 Oct. 22nd. Please intimate ~~the~~ name of Official ~~who will be deputed~~ your proposed deputy as legal adviser to Mrs. Hansa Mehta.

Ministry of EA. & CR.

~~DEPARTMENT/OFFICE~~
UNO.I.Branch.

Immediate

File No.
Serial No. (41)

(25)

~~Letter~~
Draft Memorandum
~~Telegram~~

Office memo.

1. Date of despatch.
2. List of enclosures.

No. F.5(68)-UNO.I/47. *Dated* 31.10. Novr. 1947.

To

✓ The Ministry of Home Affairs.

✓ The Ministry of I & B.

Subject:- Second Session of the Commission on Human Rights.

The undersigned is directed to invite reference to this Ministry endt. No. F.5(68)-UNO.I/47, dated the 13th October 1947 and to request that the comments of the Ministry of Home Affairs / I & B on the proposals made by the U.K. Representative may kindly be furnished to this Ministry at a very early date.

Sd- K.K.Saksena
J.S.(C).

FAIRED

(42)

D.O.No.F.5(68)-UNO.I/47.

Ministry of External Affairs and
Commonwealth Relations,
New Delhi 3,
The 31st October 1947.

Subject:-Second Session of the Commission on Human Rights.

Dear Mrs. Hansa Mehta,

In continuation of my letter No.F.5(68)-UNO.I/47, dated the 29th October 1947, I write to inform you that the Provisional Questionnaire formulated by the Trusteeship Council vide item 8 of the Provisional Agenda of the Commission, was considered by the Government of India, who attach particular importance to the undermentioned questions. It is requested that you should insist on their retention if any attempt is made to omit them.

11,16,17,18,24,28,32,41,42,43,44,45,59,60,67,70,79,80,81,84, 112,114,118,124,126,127,136,148,160,166,203 and 246.

2. I am to request that your comments on the United Kingdom proposals (copy sent to you with my demi official letter No. F.5(68)-UNO.I/47, dated 13th October 1947) may be sent to us at a very early date.

3. We intend to call an Inter-Departmental meeting to finalise our views before your departure. Please let me know when it would be convenient to you to come to Delhi for this purpose.

4. The High Commissioner for India, London, has agreed to depute a legal.....

P.T.O.

depute a legal adviser to assist you in Geneva.

Yours sincerely,

Sd/- R.R. Saksena.

To

Mrs. Hansa Mehta,

16, Altamount Road,

Bombay.

'S'

D2459-UNOL[4]

India Delegation to the United Nations

350 Fifth Avenue, Room 6212, New York 1, N. Y.

(44)

(27)

Forwarded with the compliments of the Representative of India to the United Nations

No. 2600

Oct. 14, 1947.

SECRETARY TO THE GOVERNMENT OF
INDIA IN THE EXTERNAL AFFAIRS AND
COMMONWEALTH RELATIONS DEPT.
NEW DELHI, INDIA.

CABLE ADDRESS: UNATIONS NEW YORK

TELEGRAMME: UNATIONS NEW-YORK

45

UNITED NATIONS NATIONS UNIES

LAKE SUCCESS, NEW YORK • FIELDSTONE 7-1100

REFERENCE:

605-3-1-13/JPH

6 October 1947

The Secretary-General of the United Nations presents his compliments to the Honourable Minister for External Affairs of India and has the honour to transmit herewith a copy of a letter addressed to him on 20 September 1947 by the Chairman of the Commission on Human Rights.

pp. 46-47 infra

Pandit Jahwarlal Nehru,
The Honourable Minister forExternal Affairs,
Department of External Affairs,
New Delhi, 3,
India.

UNITED NATIONS NATIONS UNIES

146

COPY

September 20, 1947

My dear Mr. Lie:

Since the second session of the Commission on Human Rights has been postponed from August 25 to December 1, 1947, the time available for consideration by all member nations of an international bill of human rights is considerably shortened. I should like respectfully to suggest that member nations might well start now to make plans for the setting up of necessary arrangements within their respective governments for consideration of the draft bill as soon as it is sent to them following the close of the Commission's second session, scheduled to end December 19, 1947.

According to the resolution adopted by the Economic and Social Council March 28, 1947, the bill as developed by the Commission on Human Rights at its second session is to be submitted to all States Members of the United Nations for their observations, suggestions and proposals. Thereafter the procedure determined upon by the Council is as follows:

> "That the observations, suggestions and proposals of the member nations then be considered as a basis of a redraft, if necessary, by the drafting committee of the Commission on Human Rights; and
>
> "That the resulting draft then be submitted to the Commission on Human Rights for final consideration; and
>
> "That the Council consider the proposed international bill of human rights as submitted by the Commission on Human Rights with a view to recommending an international bill of human rights to the General Assembly in 1948."

The type of planning which member states might find it advisable to undertake at this time could include decision as to allocation of responsibility within their respective governments for

consideration

His Excellency
Trygve Lie,
Secretary-General
of the United Nations,
New York 63, New York.

Encl. to S. (27)

47

consideration of the draft bill, as developed by the Commission at its second session, decision as to how it should be considered, etc. No action in accordance with these plans would of course be needed until after receipt of the draft bill following the end of the Commission's second session on December 19, 1947.

If you see no objection, I should like to suggest that copies of this letter be sent to States Members of the United Nations.

Sincerely yours,

Mrs. Franklin D. Roosevelt,
Chairman, Commission on
Human Rights

D2460-UNOL(47)

India Delegation to the United Nations

350 Fifth Avenue, Room 6212, New York 1, N. Y.

48

JS(C) 1 UNO1 29/X 20 Mark 31/10 (28)

Forwarded with the compliments
of the Representative of India to
the United Nations

No. 2612 Oct. 14, 1947.

SECRETARY TO THE GOVERNMENT OF
INDIA IN THE EXTERNAL AFFAIRS AND
COMMONWEALTH RELATIONS DEPT.
NEW DELHI, INDIA.

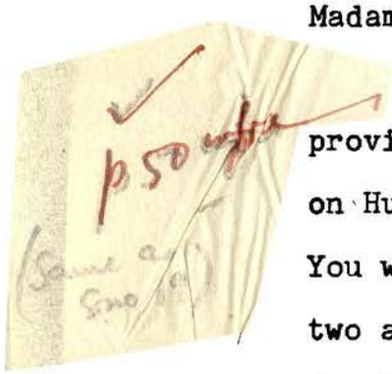
COPY

49

UNITED NATIONS
Lake Success, New York

Ref: 605-3-1-12-1 10 October 1947.

Madam:



I have the honour to send you herewith a revised provisional agenda for the second session of the Commission on Human Rights which will meet at Geneva on 1 December 1947. You will note that this revised provisional agenda contains two additional items, namely, (6) the Report of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, and (8) Consideration of the Provisional Questionnaire formulated by the Trusteeship Council.

It was necessary to insert the former item because of the decision of the Economic and Social Council to convene the second session of the Commission after the Sub-Commission meets. The second item has been inserted in accordance with the resolution of the Council of 16 August to the effect that the appropriate parts of the Provisional Questionnaire, transmitted by the Trusteeship Council for advice and comments, should be referred to the various commissions of the Council.

I have the honour to be
Madam,
Your obedient Servant.

Sd/John P. Humphrey
Director
Division of Human Rights.

Mrs. Hansa Mehta,
Representative of India to the
Commission on Human Rights,
Room 6212, 350 Fifth Avenue,
New York 1, N.Y.

United Nations / Nations Unies

ECONOMIC AND SOCIAL COUNCIL / CONSEIL ECONOMIQUE ET SOCIAL

UNRESTRICTED

E/CN.4/22/Rev.1
17 September 1947

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

PROVISIONAL AGENDA FOR THE SECOND SESSION OF THE COMMISSION ON HUMAN RIGHTS

1. Opening of the session
2. Invitation to the officers of the Commission on the Status of Women
3. Communications
4. Report of the Drafting Committee
5. Report of the Sub-Commission on Freedom of Information and of the Press
6. Report of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities
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8. Consideration of the Provisional Questionnaire formulated by the Trusteeship Council
9. Programme of Future Work
10. Other items
11. Adoption of the Report of the Commission on Human Rights to the Economic and Social Council.

Ministry of E.A.J.C.R. DEPARTMENT.

U.N.O. I Br.

No. F. 5(68)-U.N.O. I/47

(29) The 13th Nov. 1947.

A copy of the undermentioned papers is forwarded to

the Ministry of Home Affairs

the Ministry of D.J.B.

C.R. Wing of the Ministry of E.A.J.C.R.

By order, etc.,

Signature— S.A. R.R. Salcon

Designation— J.S(c)

List of papers forwarded.

Copies. Originals.

Note from the Secy General of the United Nations, No. 605-3-1-13/JPH, dated 6.10.47 with enclosure.

Corr. pages 45-47

S. 8.

MFP—2 S&P—6770—(M-1703)—25-6 46—400,000.

(30) S.C. to Nr.

D.O.No.F.5(17)-UNO.I/47.

Air Mail.
Registered.

Ministry of External Affairs and Commonwealth Relations.
New Delhi 3,
The 8th November, 1947.

Subject:- Brief for India's representative on the Sub-Commission on prevention of discrimination and protection of minorities.

5(68)(76)

In continuation of my letter No.F.5(68)-UNO.I/47, dated the 31st October 1947, I forward herewith a copy of a brief together with a copy each of the documents pertaining to it for your information.

Yours sincerely,

Sd/- R.R. Saksena.

To

Mrs. Hansa Mehta,
16, Altamount Road,
Bombay.

Copy forwarded for information to the C.R. Wing.

By order, etc.,

Sd/- R.R. Saksena.

Joint Secretary to the Government of India.

"MSS"

(31)

D 2588-UNOL/47

153

No. D. 4859-EP.I/47.
GOVERNMENT OF INDIA
MINISTRY OF INFORMATION AND BROADCASTING.

NEW DELHI, the 7th November, 1947.

SUBJECT :- Report of the Drafting Committee to the Commission on Human Rights.

Dear Mr Menon,

Will you please refer to Mr. Saksena's letter to Mrs. Mehta, No. F.5(68)-UNO.I/47, dated the 13th October, 1947, copy endorsed to this Ministry?

2. The Ministry of Information & Broadcasting have no comments to make.

Yours sincerely,

(P. B. GUPTA)

M. Gopalaswamy, Esquire,
Under Secretary to the Govt. of India,
Ministry of External Affairs &
Commonwealth Relations,
NEW DELHI.

"MEHTA"

(32)

D2636-4/no4/1) 154

United Nations | Nations Unies

ECONOMIC AND SOCIAL COUNCIL | CONSEIL ECONOMIQUE ET SOCIAL

UNRESTRICTED

E/CN.4/25
17 October 1947
ENGLISH
ORIGINAL: FRENCH

U.N.O.I.

COMMISSION ON HUMAN RIGHTS

THE FUNDAMENTAL RIGHTS OF MAN AS THE BASIS FOR A RESTORATION OF INTERNATIONAL LAW*

(Declaration Adopted by the Institute of International Law at its Meeting at Lausanne on 9 August 1947)

The Institute of International Law,

CONSIDERING that on the morrow of events which have shaken the very foundations of a civilization traditionally founded on respect for human values, it is supremely important to reaffirm certain principles which reflect rather more closely the present demands of the juridical conscience of civilized peoples;

NOTING that the regimes which enslaved and debased human beings sought, by thus subordinating man completely to their own political ends, to engage in acts of aggression and conquest, and that it is essential to prevent their recurrence for all time;

RECALLING that members of the United Nations have undertaken the task of achieving "international co-operation....in promoting and encouraging respect for human rights and for fundamental freedoms" (Article I, paragraph 3 of the United Nations Charter and Article 55, sub-paragraph (c));

MAKES the following declaration:

I.

Recognition and respect of the inherent rights of human beings, which the State should serve but not enslave, are closely bound up with the development of international law.

II.

Such recognition and respect are at the root of any functional concept of authority, which derives its justification from its ability to achieve the individual and social ends of man. Dissemination of this fundamental concept among the public will serve to moderate authority: it will keep the State within its

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* Document distributed at request of the United Kingdom delegation.

/proper

proper function by safeguarding it against the tendency of those in power to abuse their authority.

III.

An effective system of international law is inseparably bound up with respect for the individual within the State. In the international sphere the moderating functional concept of authority is clouded by the stubbornly held tradition which regards the Sovereign State, the organ of security and instrument of authority, as the supreme embodiment of law and order.

IV.

It is insufficient, whether internationally or nationally, to affirm respect for the rights of the individual unless proper guarantees and checks are provided to ensure their being effective.

V.

The Institute considers acceptance and dissemination of the ideas contained in the present declaration essential to the observance of international law and to its technical development.

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(33)

Ministry of EA & CR.

UNO. I. Branch.

DEPARTMENT/OFFICE

Immediate

Issue today without fail 19.11.47 2 DPS I

Office Memorandum / Draft / Telegram

File No.

Serial No.

1. Date of despatch — Despatched 19.11.47

No. F. 5(68)-UNO. I/47. Dated 19 Novr. 1947.

2. List of enclosures

To

(1) The Ministry of Home Affairs.
(Mr. R.N. Banerji)

(2) The Ministry of I. & B.
(Mr. G.S. Bhalja).

(3) The C.R. Wing of the Ministry of EA. & CR.
(Mr. B.F.H.B. Tyabji).

Subject:- Second Session of the Commission on Human Rights to be held in Geneva on 1st Decr. 1947.

Reference this Ministry endt. No. F.5(68) UNO.I/47, dated the 13th October 1947.

2. It is proposed to hold an Interdepartmental meeting on Friday, the 21st November 1947 at 3.30 p.m. in the Committee Room of the Ministry of EA. & CR. to discuss and finalise our views on the proposed amendment to the Draft of an International Bill of Rights proposed by the U.K. Govt. The Ministry of Home Affairs, etc., are therefore, requested to send their representative to this Meeting to place before it their views on this matter. Mrs. Hansa Mehta, our representative on the Commission will also attend the meeting.

3. A copy of the revised agenda of the Commission together with a copy of the brief so far prepared in consultation with

Please see a few extra copies of the circulated for Brunei

10 A/N 19/11 10-15 A

S.no. (17).

the draft brief and

cf. notes p. 17.

⊗ Corr. p. 25.

≠ Doc. No. E/CN.4/AC.1/3. s/p G

@ Doc. No. E/CN.4/22/Rev.1. p 50/Corr.

+ s/p E

S. 5 (Large).
MFP—152 S&P—6767—(M-571)—19-6-44—40,000 Pads.

the Ministries concerned is enclosed.

~~for information.~~

R.M.

J.S.(C)

Ministry of EA. & CR.
UNO. I. Branch.

DEPARTMENT OFFICE.

D. O. Letter
Draft Demi-official
Telegram

(34)

Immediate

File No.

Serial No.

1. Date of despatch

No. F.5(68)-UNO.I/47. Dated 19th Novr. 1947.

2. List of enclosures

To

Mrs. Hansa Mehta,
8-A, Ratendone Road,
New Delhi.

Subject:- Second Session of the Commission on Human Rights to be held in Geneva on 1st December 1947.

In continuation of my letter No. F.5(68)-UNO.I/47, dated the 31st October 1947, I am to inform you that an Inter-departmental meeting will be held on Friday the 21st November 1947 at 3.30 p.m. in the Committee Room of this Ministry to discuss and finalise the draft brief and our views on the proposed amendment to the draft of an International Bill of Rights proposed by the U.K.Govt. We shall be grateful if you will kindly attend the said meeting.

2. A copy of the revised agenda of the second session of the Commission together with a copy of the brief so far prepared is enclosed ~~for information~~.

Yours

J.S.(C).

S. 5 (Large).
MFP—152 S&P—6767—(M-571)—19-6-44—40,000 Pads.

Copy released in P.V. for Track in regard to passport

18/11

U.NO.I. (59)

18/11 MKR 18/11

(35)

8A Aurangzeb Road
New Delhi
17-11-47.
D 2686-UNO/47

Dear Mr. Saksena,

Herewith I am sending my passport. Please do the needful in the matter.

You will please inform the High Commissioner in London that I shall be in Geneva on the 25th. so that he may see the legal advisor he has promised by the time I am there. I shall also require a stenographer. To take down notes etc.

Yours Sincerely
Jawaharlal Nehru.

(60)

(36)

(Fair copy).

TELEGRAM ENCLAIR.

To - Dr. Humphery, Director, Human Rights Division, Geneva.
repeated Hicomind London and Indiadel, New York.

From - Foreign, New Delhi.

TELEGRAM NO. 2608—UNO, I, dated the 19th November 1947.

UNOI Mrs Hansa Mehta India's representative Human Rights Commission reaching Geneva 25th November Name of her legal adviser will be intimated to you by Hicomind London

(Legal Adviser should arrive Geneva 25th November)

(x) to Hicomind London only.

Addressed Dr Humphery, Director Human Rights Division Geneva repeated to Hicomind London and Indiadel New York.

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(37)

D 2701-UNO/47

61

UNOI BR (3) 20/11 Und 20/11

Sec (24)

TELEGRAM ENCLAIR 15294

From..... Hicomind, London

To..... Foreign, New Delhi

No.3975

Dated 18th (received 19th) November 1947. T.O.O. 1600
T.O.R. 1115

Your telegram 2474 UNOI dated 1st November. Intention is to depute Sir Dhiren Mitra to assist Mrs. Mehta if services of Sir Dhiren Mitra not available at time of conference name of suitable substitute will be suggested.

.....

PS TO PM (2) UNOI BR(3) SG JSX JSE JSC C.R. WING (SECY & JT SECY) & CABINET SECY.

E.A.*

19/11/47.

(38)

Ministry of EA. & CR.

UNO.I.Branch.

~~DEPARTMENT/OFFICE.~~

Draft ~~Office Letter~~ / Memorandum ~~Telegram~~

File No.

Serial No.

1. Date of despatch

2. List of enclosures

No. F.5(68)-UNO.I/47. Dated 26th Novr. 1947.

To

(1) The Ministry of Home Affairs.

(Mr. G.V.Bedekar)

(2) The Ministry of Information & Broadcasting.

(Mr. M.Azim Husain)

(3) The C.R.Wing of the Ministry of EA. & CR.

(Mr. B.F.H.B.Tyabji).

Subject:- Second Session of the Commission on Human Rights to be held ~~in~~ at Geneva on 1st Decr. 1947.

~~Continuation~~ Reference this Ministry's Office Memo. No. F.5(68)-UNO.I/47, dated the 19th Novr. '47.

2. A copy of the Minutes of ~~The~~ Inter-departmental meeting held in the Committee Room of the Ministry of EA. & CR. on the 21st November 1947 to discuss and finalise the draft brief, and our views on the proposed amendment to the Draft of an International Bill of Rights is forwarded herewith for information.

J.S.(C).

Copy with a copy each of the ~~draft~~ brief and the Minutes of the Interdepartmental meeting forwarded for information to

(1) The High Commissioner for India, London.

(2) The Representative of India with the United Nations, 350 Fifth

S. 5 (Large).
MFP—152 S&P—6767—(M-971)—19-6-44—40,000 Pads.

Avenue, Room 6212, New York, 1, N.Y.

By order, etc.,

sd/ H. Dayal

J.A.S.(C).

(39)

Ministry of EA. & CR.

UNO.I.Branch.

~~DEPARTMENT/OFFICE~~

By Air Mail Bag.

D.O. Letter / Draft ~~Memorandum / Telegram~~

File No.

Serial No.

1. Date of despatch — No. F.5(68)-UNO.I/47. Dated 26th Novr. 1947.

2. List of enclosures

To

Mrs. Hansa Mehta,

India's Representative on the Human Rights Commission,

Geneva.

C/O

The High Commissioner for India in London

Subject:- Second Session of the Commission on Human Rights to be held at Geneva on 1st December 1947.

In continuation of ~~Mrs.~~ Saksena's d.o. letter No. F.5(68)-UNO.I/47, dated the 19th November 1947, I am desired to forward herewith a copy of the Minutes of ~~the~~ Interdepartmental meeting held in the Committee Room of the Ministry of EA. & CR. on the 21st Novr. 1947, ~~for your information.~~

Yours

26/11

J.S.(C).

S. 3 (Large).
MFP—152 S&P—6787—(M-571)—13-6-44—40,000 Pads.

D 21/11 (40) D 2729-VNOL(79)

The Indian Radio & Cable Communications Co., Ltd.

C.K.P. 10,000x200

GOVERNMENT OF INDIA

BOMBAY

OVERSEAS COMMUNICATIONS SERVICE

N. B. :—*All enquiries regarding this Telegram should be made to the Government Telegraph Deptt. accompanied by this Form.*

THE FIRST LINE OF THIS TELEGRAM CONTAINS THE FOLLOWING PARTICULARS IN THE ORDER NAMED: Prefix Letters and Number of Message, Office of Origin, Number of Words, Date, Time filed, and Official Instruction—if any.	RECD. AT BOMBAY AT :- 20-11-47 20 NOV 1947

R. 189

NDS286 SVE281 LONDON 23 20 1616 ETATBG -

FOREIGN NEWDELHI -

4034 FROM MITRA PLEASE SEND A COPY OF RAMASWAMYS

BOOK ON FUNDEMENTAL RIGHTS TO GENEVA WITH

MISTRESS HANSA MEHTA STOP - HICOMIND +

INWARD CCT NBR	INITIALS	TIME RECD

Ministry of EA. & CR.
UNO. I. Branch.
~~DEPARTMENTAL OFFICE~~

File No.
Serial No.

(47)

Letter
~~Memorandum~~
Draft ~~Telegram~~
Telegram

En Clair.

1. Date of despatch
2. List of enclosures.

No. 2634-UNO/ Dated 22/11/49

From... Foreign, New Delhi.

To..... Hicomind, London.

For Mitra. A copy of Ramaswamy's book on Fundamental Rights ~~handed over to~~ has been sent with Mrs. Hansa Mehta.

UNO I Br
22/12

(42).

(67)

D3072-UNO[illegible]

TELEGRAM ENCLAIR 16549
From.....Hicomind London
To.....Foreign New Delhi
No.4640
Dated 19th and read 20th December 1947 T.O.O.1435
T.O.R.1145

.....

IMMEDIATE

MEHTA?

Mrs HANSA METHA leaving GENEVA by air on 18th December scheduled arrive Bombay 21st December. Kindly arrange facilities.

.....

PS TO PM(2): G BR (3): SG: JSX: JSE: JSC: DSE II: AS(G) CRWING(SECY AND JT SECY) CAB SECY: AND COPIES TO UNO I BR AND E II BR:

PJR
21st Dec'47

-.-.-.

(43)

D. 2.2345 cpys 68
D. 212-UNO-I/48.

8-A, Ratendone Road.

New Delhi, 13th January 1948.

To,

The Hon'ble the Prime Minister,
External Affairs Ministry,
Government of India,
New Delhi.

Sir,

1. I beg to submit herewith my report of the second session of the Human Rights Commission which met in Geneva from the 1st to 17th December 1947, and which I attended as a delegate from India.

2. I am sorry I am not able to send copies of the minutes of the proceedings or of the official report as passed by the Commission as the proceedings of all the meetings held have not yet been received by me.

3. I would also like to place before you the fact that unless proper secretarial help is given to your representatives it is extremely difficult for them to do justice to their work. I was asked to engage a Secretary at Geneva. Even though the United Nations Secretariat did its best to find one, it was not possible to get one in time, nor was it possible to get one who knew both shorthand and typing. It would have been better if the High Commissioner's office had been instructed to send one from London.

I beg to remain,
Your most respectfully,
Hansa Mehta

Enclosure to Sl. No (43)

(61

Report of

The Human Rights Commission

Session:-

from 2nd December 1947.
to
17th December 1947.

(70

The Second Session of the Human Rights Commission held at G E N E V A from 2nd December to 17th Dec. 47.

I attended the second session of the Human Rights Commission held at Geneva with Sir Dhiren Mittra as my legal adviser. I regret I am not able to give a fuller report this time as the secretarial help received by me was poor and it was not possible to keep full notes. The session was scheduled to meet on the 1st of December but the Chairman was held up at Shanon on account of bad weather and as some of the other members were also not present, the meeting was adjourned to the 2nd December.

The first item on the agenda was the opening of the session. The Chairman, however, did not waste time over formalities and went straight to business by taking up the second item which was the adoption of the agenda. The Russian delegation raised rather an unnecessary point. Mon- Bogmolov objected to the document on the memorandum on Trade Union Rights being bracketted with the item five i.e. with the Drafting Committee's Report. His contention was that the document was for the first time submitted to the commission; and that it was so important that it should form a separate item on the agenda. I pointed out that the commission was not concerned with Trade Union Rights as such, but only so far as they formed part of the Human Rights. It was, therefore, not necessary to consider the document as a separate item but that it should be considered with such other documents as pertained to item five. In this I was supported by the delegate from the United Kingdom. In the end it was decided to adopt the agenda without any change but under rule 9 to revise it if it was felt necessary to do so.

At this stage Mr. Moderow Director of the European office of the United Nations addressed the Commission. He assured the commission that the administration would do everything possible to facilitate their work. He, however, pointed out that strictly limited credits were placed at the disposal of the European Office to provide conference services and it was dangerous to overspend these credits. The commission experienced some difficulties later when it divided itself into working groups which worked simultaneously, because of the shortage of secretarial staff.

Item 3 i.e. invitation to the officers of the commission on the status of women. Prof, Humphreys informed the commission that as per Resolution of the Economic and social council the office bearers of the commission on the status of women were invited to attend the session.

Item 4 Communications :- Prof. Humphreys pointed out that as per the Resolution of the Economic and social council the commission was to receive the confidential list of communications as prepared by the secretariat in a private meeting and that the commission should appoint an adhoc committee to go through the list and decide as to which of the communications were to be made available to the members. The chairman proposed that the commission should meet in private the next morning to receive the confidential list. The Soviet delegation raised an objection to the appointment of the ad hoc committee. Mon. Bogomolov said that consideration of communications from

P.T.O.....2

(71

non-self governing territories and from the largest democratic organisations should be given priority and that individual communications should not be taken into account. There was a good deal of discussion on the subject. I intervened at last to point out that the Resolution of the Economic and social council was clear. Under the Resolution there was nothing else for the commission to do but to appoint the ad hoc committee which was empowered to go through the list. The delegate from Australia also agreed with me and in the end it was decided to appoint an ad hoc committee. This committee was required to examine the communications received upto October'47 and also to meet sometime before the commission met again in the month of May. The Chairman appointed the same persons on this committee as are on the Drafting Committee. In explanation she said that as the Drafting Committee would meet before the commission met it would be convenient to have the same members on the other committee. These members are :- Australia; Chile; China; France; Lebanon; U.S.S.R; United Kingdom; and U.S.A. This committee submitted its report just before the close of the session which was with some modification and changes approved by the commission.

From the confidential list submitted to the members I find that there are letters from the Hindus as well as the Muslims in this country complaining against the ill treatment received by them at the hands of the other community.

Item 5. Report of the Drafting Committee. This was the main item on the agenda. The drafting committee was asked to draft an international Bill of Human Rights. From the report it was evident that the committee had not agreed as to the form the Bill of Human Rights should take. As the Chairman remarked the Drafting Committee had drafted a declaration of - Rights as well as a convention, and she desired the members to discuss the issue as to whether the Bill of Rights should be a declaration only or a convention only or both.

The attitude of the soviet delegation was interesting. They were for a declaration only and were opposed to convention which meant implementation to which they were consistently opposed. The delegate from United Kingdom had submitted proposals favouring both a declaration and a convention but the delegate informed the commission that he had revised his opinion and was in favour of the convention only. The U.S.A. delegation was in favour of declaration only. The French delegation pointed out that while - declaration was the first thing to be considered it was to be understood that it was essential that it should be followed by a convention or - conventions. Mon. Cassin said that the Declaration could only lay down principles which should be taken up and developed into conventions. He also said that if they only thought in terms of a declaration the immediate result would be a considerable increase in the length of that document, if they only prepared a convention the scope of the discussion would be restricted. Mon. Cassin's views were shared by most of us. I spoke twice on the subject during the course of the debate expressing the Indian view point in the matter. (copies of my speech are attached herewith).

P.T.O...3

(72

After a good deal of discussion it was decided on the proposal of the delegate from Belgium to set up three working groups:-

(1) to draft a Declaration;
(2) to draft a Convention, and,
(3) to devise a machinery for implementation.
~~without coming to any final decision with regard to the form of the Bill.~~

The Commission accepted this proposal and asked the Chairman to appoint the three groups. I was at first included in the second group, i.e., group to draft a Convention. The delegate from Egypt, who was included in the third group was anxious to be in the second group and asked me if I would be willing to exchange places with him. As I considered the work of the third group, i.e., to devise a machinery for implementation very important, I agreed to do so. I, however, asked Sir Dhiren Mittra to attend the second group as an observer. The groups were distributed as follows:-

For drafting a declaration: (1)U.S.A.; (2)U.S.S.R.,(3)France; (4)Byelorussia; (5)Panama and (6)Phillipins;

For drafting a convention : (1)United Kingdom; (2)Lebanon;(3)Yugoslavia; (4)Egypt; (5)China and (6)Chile;

For implementation: (1)India; (2)Belgium; (3)Australia; (4)Iran; (5)Ukraine, and (6)Uruguay.

I was elected Chairman of my group. We concluded our deleberations in seven meetings while the other two groups did so in nine meetings. The Commission then took up the three reports at the February Session. The reports of the first two groups were taken together for discussion as some of the articles in both were common. In order to expedite work, the Chairman asked the members not to be particular about wording as that would be taken care of later by the Drafting Committee. She also made a rule, which was agreed to by the members that since the articles in the Bill were discussed again and again, there was no need for every one to speak on each article that there should be one speaker in favour and one against and the rest of the members should express their approval or disapproval by voting for or against. Later the Soviet delegate as well as delegate from Uruguay protested against the rule and the Soviet delegate challenged the ruling of the Chairman, which created quite an interlude in the discussion.

With regard to the report of the third working group, I proposed that it should be sent without any modification to the governments with such comments as the members made for or against. This proposal was accepted in the end with slight addition, viz., that the report should go to the Economic and Social Council also before its February Session. My reasons for this proposal were that it was for the first time that a complete scheme was devised for the implementation of the Bill of Rights. The delegates would not be in a position to vote for it or against it without due consideration.....

(2

consideration and without consulting their Governments. Implementation at the international level would mean some encroachment on the National Sovereignty so that the delegates would not like to commit their governments one way or the other. It will now be for the governments to decide whether they would like to accept the scheme as it is or suggest changes.

In the Working Group I had opposed the Australian proposal to establish an International Court of Human Rights. My plea was that the existing machinary should be used. The Australian proposal is very much whittled down as will be seen from the report. The original proposal intended to create an elaborate machinary - a super civil court. The scheme as proposed by the Working Group is for setting up, in the first instance, a Standing Committee of not less than five independent men and women. This committee is to serve as a screening committee as well as a conciliation committee. Dr. Lauterpacht has proposed such a committee in his book, which he calls High Commission. If reconciliation fails then the Committee reports to the Human Rights Commission. If the commission thinks some action necessary, they report to the Economic and Social Council, which in turn would report to the General Assembly. If there is a dispute in regard to any violation of human rights, as defined in the International Bill of Rights, the dispute is to be referred to a court. The difference of opinion comes in with regard to the nature of this court, i.e., whether it should be the International Court of Justice or whether it should be a new court of Human Rights. Even if the decision is in favour of the International Court of Justice, the Charter of the United Nations will have to be amended to that effect, as the powers of the court as they are defined today confine it to deal with disputes between two states. Even when its legal advice is sought it can only be in reference to matters dealing with states. When, however, there is a dispute between a State on the one hand and an individual or a group of individuals on the other, the court can have no jurisdiction unless such power is given to it by amendment of the Charter. The delegate from Australia told me that he would have accepted my proposal of using the existing machinary if this difficulty was not there. He said it would be easier to create a new machinary than to amend the Charter. From the attitude of the delegates from the U.S.S.R. and the U.S.A. it seems that the Australian delegate is not far wrong. In my opinion, however, the creation of a new machinary is also not going to be easy, though it will be easier than amending the Charter. If, therefore, it is to be a new court, it is no use making it only an advisory body. The Working Group has, therefore, proposed that the disputes should be referred to the Court of Human Rights, whose judgment should be final. The enforcement of its decision, however, is left to the General Assembly. The reports of the three groups will be sent to the governments early in January. Governments are expected to reply by the first week of April so that their suggestions may be considered by the Drafting Committee and submitted to the Human Rights Commission, ~~which is expected to~~ meet on the 17th May, 1948.

The Russian attitude throughout the session was not very helpful. The Russian Group consisting of U.S.S.R., Byelorussia, Yugoslavia and Ukraine, was consistently against the idea of implementation. It desired the Bill of Rights to be a declaration only. According to it, the only obligation on the part of the states to implement the rights should be moral.

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They were not in favour of the Bill to be a Convention or Conventions nor in favour of a machinary for the supervision of the observance of these rights. The delegates from U.S.S.R. and Byelorussia who were included in the first group participated in the discussions. The delegate from Yugoslavia who was in the second group made a long statement dissociating himself from the draft Convention; and the delegate from Ukraine who was in the third group said that he could not discuss any ways and means of implementing without knowing what was to be implemented. He said that implementation should be considered at a later stage. He then walked out of the meeting and ceased to attend. In the plenary session all the four delegates consistently abstained from voting or voted against the proposals.

The final decision as to the form of the International Bill of human rights, was taken almost on the last day. It was agreed that the declaration, and the Convention should form part of the International Bill; and that the Bill should also include provisions for the machinary for the implementation.

6. Report of the Sub-Commission on Freedom of Information :-

The Sub- commission had already reported directly to the Economic and Social Council and action had already been taken on the report, the Commission, therefore recorded the report and extended the term of the Sub- Commission as desired by them for another year.

7. Report of the Sub- Commission on the Prevention of Discrimination and Protection of Minorities.

The report with some modifications was approved.

8. The Year-book on Human Rights. A small committee was appointed to discuss the year book on Human Rights, and make suggestions. The Committee submitted a good report making some valuable suggestions for the preparation of year-books in future. The report was approved.

9. Consideration of the Provisional questionaire of the Trustee ship Council:- The Commission had no suggestions to offer.

10. The programme of future work. The reports of the three working groups with such changes as are made by the Commission will be sent to the Governments in early January. Their suggestions are to be received in early April, which will be considered by the drafting Committee whose report will be placed before the third session of the Human Rights Commission meeting on the 17th May.1948 at Lake Success.

The Commission concluded its session late on the evening of the 17th December. I left for India on the morning of the 18th.

Jawaharlal

(75

2nd December 1947.

Listening to the speeches I feel that we have not progressed much further than where we were last time ! The Drafting Committee was asked to prepare a draft of the International Bill of Rights. The Committee had to decide two questions, i.e.:

- (1) What form the Bill should take! and (2) what should be its contents; i.e.
- What should be the rights included in it.

With regard to the contents the Committee seems to have reached a great measure of agreement. It is with regard to the form that there seems to be a divergence of opinion. Three alternatives have been given to us :

1) Whether it should be a mere declaration;

2) Whether it should be a convention, or

3) Whether it should be both.

Mere declaration has no meaning. The Bill must be implemented. My Government has all along laid stress on the implementation of the Bill. We can decide upon the form of the Bill if we decide as to how the Bill is to be implemented. Whether the Bill in itself should contain articles for implementation as we have in the Articles 47 and 48 of the Secretariat draft or whether we should have separate conventions drafted, that is a question which we can decide now. In my opinion we must consider the form of the Bill now before we can proceed further with the contents.

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Speech made by Mrs. MEHTA, Indian Delegate for Human Rights.

I am grateful to the Australian Delegate for making his position clear. We are drafting an International Bill of Rights, which for my part I would wish should become part of the International Law and also part of the domestic law.

In our country we are having incorporated in our constitution most of these fundamental rights and within a few weeks when the constitution is ratified, they will become part of our national Law.

With regard to the confusion referred to by the representative from Australia, it seems to me that it may have arisen from the report of the drafting committee. That report contains three alternatives: whether the Bill is to take the form of a declaration, or a convention or both. I feel that this International Bill should be in the form of a declaration as well as a convention. To use a happy phrase used in the UNESCO draft, I would say that this International Bill should be an expression of the faith; and also be a programme of actions to be carried out. It becomes a declaration as an expression of faith; it becomes a convention as a programme of action. Therefore there should be no confusion.

I am also in agreement with the representative from Australia that this declaration should not contain anything which we are not going to implement. We should not give a false picture to the world by putting in all sorts of

of rights which we may not implement. The declaration would be of general principles and the convention would go into details defining precisely the rights.

In the declaration there should be an article or a clause, or perhaps it should form part of the preamble that these rights are to be ratified or implemented by the Member States of the United Nations.

With regard to the implementation, I have always held the view that these rights should be implemented. If my colleague from Australia could devise some means so that the present machinery of the United Nations, for instance, the International Court of Justice, could implement these rights, he will have my support. I am not satisfied with the necessity of erecting a new machinery, otherwise on the principle of implementation I am in entire agreement with the Australian Delegate.

(44).

By Air Mail.

GOVERNMENT OF INDIA
MINISTRY OF EXTERNAL AFFAIRS AND
COMMONWEALTH RELATIONS

EXPRESS LETTER.

From : Foreign, New Delhi 3.

To Ficomind, London.

No.F.14(21)-E.II/47, dated the January, 1948.

Subject:- Deputation of Mrs. Hansa Mehta to represent India on the United Nations Commission on Human Rights held at Geneva.

===

Reference Government of India, Ministry of External Affairs and Commonwealth Relations telegram No.9918, dated 24th November, 1947.

2. In the case of Representatives, Delegates, etc. sent to represent India on the various Commissions, Committees, etc. of the United Nations where the actual travel expenses of such Representatives, Delegates, etc. are borne by the United Nations Organization, the Government of India do not consider it necessary to sanction free passages (by air or sea) to the individuals concerned and have decided that advances, recoverable from the United Nations Organization, may be made, wherever necessary, to meet their travelling expenses. Accordingly the terms sanctioned for Mrs. Hansa Mehta, India's Representative on the United Nations Commission on Human Rights which met at Geneva on 1st December 1947, at items (1), (2) and (5) of para 1 of the telegram under reference should be treated as cancelled and the expenses already paid on that account should be communicated to the India Delegation Office, New York, who will then effect their recovery from the United Nations Organization.

Issue of the above has been authorised.

Under Secretary to the Government of India.

Copy, for information, to

the Ministry of Finance
the Accountant General, Central Revenues, New Delhi
*the India Delegation Office, New York.

*By Air Mail.

By order, etc.,

Under Secretary to the Government of India.

(45)

~~DEPARTMENT/OFFICE~~
Ministry of E.A. & C.R.
U.N.O.(I) Branch.

File No.
Serial No. 79

~~D.O.~~ Letter
Draft ~~Memorandum~~
~~Telegram~~

No. F.5(68)-UNOI/47. Dated 29-1-48.

1. Date of despatch.

2. List of enclosures.

Mrs. Hansa Mehta,
8-A, Ratendone Road,
New Delhi.

Madam,

I am directed to acknowledge with thanks the receipt of your letter dated ~~June~~ 13 January 1948, enclosing your Report on the second session of the Human Rights Commission.

I have,
~~Yours~~ etc.,

Joint Secretary (c)

(46)

Ministry of E.A. & C.R.
U.N.O.(I) Branch.

(8)

DEPARTMENT/OFFICE.

Draft ~~Letter~~ / Memorandum / ~~Telegram~~

File No.

Serial No.

1. Date of despatch

2. List of enclosures

No. F.5(68)-UNOI/47. Dated 25th January 1948.

1. The Ministry of Home Affairs.
2. The Ministry of Information and Broadcasti
3. C.R. Wing of the Ministry of E.A.&C.R.

Subject: Second Session of the Commission on Human Rights.

Reference this Ministry's Office Memo. No.F.5(68)-UNOI/47 dated 26 November 1947.

2. A copy of the Report on the second sessio of the Human Rights Commission by Mrs. Hansa Mehta, India's representative on the Commissi is forwarded herewith for information.

Sd: M.G. Menon
~~Joint~~ Under Secretary(UNO)

Copy, with a copy of the Report, forwarded for information to

(1) The High Commissioner for India, Lond
(2). ~~India Delegation Office~~ The Representative of India to the United Nations, 350, Fifth
Room 6212, New York 1, N.Y.

By order etc.
Sd: M.G. Menon
Under Secretary(UNO)

S. 5. (Large).
MFP—418 S&P—6767—(M-770)—9 1-47—1,00,000 Pads.

(47)

~~DEPARTMENT/OFFICE~~.
Ministry of E.A. &C.R.
U.N.O.(I) Branch.

File No.
Serial No. (81)

111 Bruce 26.1.48

D.O. Letter
Draft ~~Memorandum~~
~~Telegram~~

1. Date of despatch.
2. List of enclosures.

No. F.5(68)-UNOI/47 *Dated* 24-1-48.

M.R. Masani Esq.,
~~Meher Building,~~
~~Chowpattie, BOMBAY.~~ Bombay House
Bruce Street, Fort
Bombay

Dear Mr. Masani

I am ~~directed~~ desired to enclose herewith a copy of the Report of Mrs. Hansa Mehta on the Second Session of the Human Rights Commission, for your information.

Yours ~~etc.~~ sincerely,
Sd/- M.J. Menon
Under ~~Joint~~ Secretary (UNO.)

Cor. Hp. 69-77

(48) D266 (1 of 1) 48

Indian Liaison Officer with the ~~United Nations~~

350 Fifth Avenue, Room 6212, New York 1, N. Y.

D-3054-CR48

Forwarded with the compliments

of the Indian Liaison Officer

No.74 January 16, 1948

Letter No. 50A-17/1/01 dated 9 January 1948 from the United Nations Secretariat

SECRETARY-GENERAL,
MINISTRY OF EXTERNAL AFFAIRS
AND COMMONWEALTH RELATIONS,
GOVERNMENT OF INDIA,
NEW DELHI, INDIA

CABLE ADDRESS: UNATIONS NEW YORK

ADRESSE TELEGRAPHIQUE: UNATIONS NEW-YORK

83

UNITED NATIONS NATIONS UNIES

LAKE SUCCESS, NEW YORK • FIELDSTONE 7-1100

REFERENCE: SOA 17/1/01
~~608/3/1 IHR~~/JH

9 January 1948

The Secretary-General of the United Nations presents his compliments to the Honourable Minister for External Affairs of India and, pursuant to a resolution adopted by the Commission on Human Rights on 17 December 1947, has the honour to enclose herein the Report of the second session of the said Commission, so that Member Governments may, in accordance with the resolution No. 46 (IV) adopted by the Economic and Social Council on 28 March 1947 inform him of their observations, suggestions and proposals relating to the Draft International Declaration on Human Rights, the Draft International Covenant on Human Rights, and the Question of Implementation contained

Pandit Jahwarlal Nehru,
The Honourable Minister for External Affairs,
Department of External Affairs,
New Delhi, 3,
India.

in Annexes A, B and C of the Report. As instructed by the Commission, the Secretary-General has the honour to request that this information be forwarded to the Secretariat before 3 April 1948.

(49)

Ministry of EA. & CR.

UNO.I.Branch.

~~DEPARTMENT/OFFICE~~

Urgent.

Draft / ~~Letter~~ Memorandum ~~Telegram~~

File No.

Serial No.

1. Date of despatch

2. List of enclosures

No.D.266-UNO.I/48. Dated January 1948.

To

The Ministry of Home Affairs.

The Ministry of I. & B.

The Ministry of Law.

C.R.Wing (Ministry of EA. & CR)

Subject:- Report of the Second Session of the Commission on Human Rights.

The undersigned is directed to forward herewith a copy of a note from the Secretary-General of the United Nations No. 50A 17/1/01, dated the 9th January 1948 together with a copy of the Report of the Second Session of the Commission on Human Rights referred to therein and to request that the information asked for by the Secretary-General may kindly be furnished to this Ministry by the 1st March 1948, or earlier if possible, for transmission to him. After the comments are received an Inter-Ministerial meeting will if necessary be held for formulating the views of the Government of India.

Sd. M.G.Mowar
U.S (U.No).

(50)

Ministry of E.A. and C.R.
UNO I Br.

(86)

~~DEPARTMENT/OFFICE~~

File No.
Serial No. URGENT.

~~Letter~~
Draft/~~Memorandum~~
~~Telegram~~

No. F. 5(68)-UNO I/47 Dated 3-2-48

1. Date of despatch.
2. List of enclosures.

To:

1. The Ministry of Home Affairs.
2. The Ministry of I. and B.
3. The Ministry of Law.
4. C.R. Wing (Ministry of EA & CR).

Sub: Report of the Human Rights Commission.

The Undersigned is directed to refer to this Ministry's O.M. No. D. 266-UNO I/48 dated 4.2.48 (48) and request that the information asked for may be sent to this Ministry at a very early date.

Sd. M.G. Menon
U.S. (UNO)

(51) D-9667-CP148 (87)

D637-VNOL/48

No. D. 1219-EPI/48
Government of India
Ministry of Information and Broadcasting.

.....

New Delhi, the 21st February, 1948.

OFFICE MEMORANDUM

Sub:- Report of the Second Session of the Commission of Human Rights

(49)

The undersigned is directed to invite the attention of the Ministry of External Affairs & Commonwealth Relations to their Office Memorandum on the above subject No. D. 266-UNO.I/48 dated February 4th, 1948, forwarding a copy of the note from the Secretary General of the United Nations No. 50A 17/1/01 dated 9th January, 1948, together with a copy of the Report of the Second Session of the Commission on Human Rights.

pp. 83-84

2. This Ministry is concerned only with articles 31 to 33 on pages 9-10 read with the two texts on Article 17 proposed by the Drafting Committee and by the Representative of the United States on page 34.

3. The differences between the two drafts are that while the Drafting Committee suggests certain "necessary restrictions, penalties or liabilities", the U.S. draft does not do so. Also, while the Drafting Committee recommends that every person shall be free "to receive and disseminate information of all kinds", the United States of America would have added to it the clause "to seek information and the opinion of others from sources wherever situated". The comments of Uruguay on article 17 on page 40 are more in line with the United States of America draft.

4. The two drafts show clearly the conflict of interest between those countries which are anxious to maintain some official control over the flow of information and those which are anxious not so much to bring about freedom of information as to pull down the walls of censorship and security which certain countries have erected, with the object of swamping them and the rest of the world with their own ideas and opinions. The United States of America draft would appear to be directed against Russia, but both the drafts are equally directed against Asia. The chief difficulty in the world today is that while the West through its highly developed media of information, particularly news agencies, can project its ideals and institutions to the East, countries in the East have no such facilities for projecting Asia to the West. Yet it is obvious that Asia will never be understood in the West if the field is overrun by Anglo-American information interests. Accordingly this Ministry suggests that we should try to justify our policy as dictated not by Indian needs, which may be questioned but by Asian requirements. Economically poor, Asia is culturally rich, and its countries by virtue of their manpower and resources are destined to play an important part in maintaining the peace and progress of the world. Until they are in a position to compete on terms of equality, information media in Asia, therefore, need protection against Anglo-American information media which are highly developed in organisation

.....2.....

and resources.

5. It is, therefore, suggested that our support should be given to the Drafting Committee's Report subject to what has been said above.

(M. A. Husain)
Deputy Secretary to the Govt. of India.

The Ministry of External Affairs &
Commonwealth Relations.

.....

D645-UNO[7 48

(52)

D.O. No. 1289/48-Public
GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS.

New Delhi-3, the 24th February, 1948.

Dear Mr. Menon,

(49)

Will you please refer to your Office Memorandum No. D-266-UNOI/48, dated 4th February, 1948 regarding report on the Human Rights Commission? As discussed by me with you yesterday we are awaiting the receipt of copy of the new constitution to be released today or so. We shall try to send a reply by about 1st or 2nd March and hope it would be alright.

Yours Sincerely,

A V Raman

(A.V. Raman)

M. Gopala Menon Esquire,
Under Secretary to the Government of India,
Ministry of External Affairs and Commonwealth Relations,

***

Please keep the (53)

D725-dro1/48

5A Palendme Road
New Delhi (70)
29-2-48.

MSR/113

Dear Mr. Gopal Menon,

[Herewith I am returning the papers that were sent to me for my information. I have received Mr. Masani's Report as well as the article prepared by Sir B. N. Rau for the Human Rights year book. Thank you very much for the same.] Have they finally fixed the date for the next meeting of the Human Rights commission? Have government considered the report of the commission and do they intend to send any suggestions?

Yours sincerely,

Hansa Mehta

[ ] necessary extracts have been placed on relevant files.

Ministry of EA. & CR.
UNO.I.Branch.

(54)

File No.
Serial No.

Draft ~~Memorandum~~
Telegram

En Clair.

1. Date of despatch.
2. List of enclosures.

No. 557-UNI. Dated 10.3.48.

From.... Foreign, New Delhi.

To..... Indiadel, New York.

Please telegraph date and venue of 3rd Session of Commission on Human Rights.

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(55) D. 9698-CR/48.

IMMEDIATE. (92

D 886 UNO/48

No.12/18/48-Public.
Government of India,
Ministry of Home Affairs,
New Delhi 3, the 12th March, 1948.

OFFICE MEMORANDUM.

Subject:- Report of the Second Session of the Commission on Human Rights.

The undersigned is directed to refer to Office Memorandum No.D-266-U.N.O.I/48, dated the 4th February, 1948 from the Ministry of External Affairs and Commonwealth Relations, inviting comments on the Report of the Second Session of the Commission on Human Rights and to say that this Ministry agree in principle to the Draft Declaration on Human Rights, Draft Covenant on Human Rights and the question of Implementation contained in Annexures A, B and C of the Report, subject in certain cases, to the observations contained in the Annexure to this letter. It is noted that the final views of the Government of India will be formulated after a discussion between the Ministries of the Government of India concerned.

A V Raman

(A.V.Raman),
Assistant Secretary to the Government of India.

To

The Ministry of E.A. & C.R.,
New Delhi.

Encl. to M. (55)

ANNEXURE.

93

STATEMENT OF OBSERVATIONS.

1. GENERAL:

Almost all the relevant provisions of the Draft Declaration and the Draft Covenant have been embodied in the Draft New Constitution for India (vide Parts III and IV of the Draft Constitution and Comparative Statement attached). The only point of note is that the rights contained in the Draft Constitution of India are secured to its citizens only. The declaration of Human Rights contains certain rights and freedoms which can be extended to all persons including foreigners and stateless persons, but there are other rights which by their nature must be restricted in their operation to citizens only e.g. the right to own property (Art 14 Declaration); right in public or in private to manifest his beliefs in worship, observance, teaching and practice (Art 16 Declaration); right to express and impart opinions (Art 17 Declaration); right to take an effective part in the government of the country (Art 21 Declaration); the right to have full opportunity for public employment (Art 22 Declaration).

2. DRAFT DECLARATION OF HUMAN RIGHTS (ANNEXURE A TO REPORT):

Articles 1 and 2. The provisions are included in the preamble to the draft Constitution for India.

Article 8 - Although prohibition of slavery is not expressly stated in the draft Constitution for India, it is implied in the general statement in the Preamble.

Article 9 - Sanctity of home and correspondence shall be subject to the provisions of the law of the State.

Article 10 (2) - Although right to emigrate is not explicitly stated in the draft Constitution for India, it is implied.

Article 11 - The intention of this Article seems to be that a state may grant asylum from persecution and the State from whose persecution asylum is sought shall not have any right to question the grant of

asylum by another State to a person who is not a criminal or whose acts are not contrary to the principles of the United Nations. On this view this can stand.

Article 13 - Protection of marriage and family is only implied in the draft Constitution of India.

Article 15 - Developments in this direction may be awaited and provisions can stand.

Article 21 - Principles of democracy - provided for in the preamble to the Draft Constitution of India.

Article 33 - The provisions may stand.

p 30 of Doc. E/600 Sup 6

3. DRAFT COVENANT (ANNEXURE B TO REPORT):

Articles 6 & 7 - The provisions are implied in the Draft Constitution of India.

Article 9 - We have in our laws (for instance the States Prisoners' Regulation 1818 and the Public Safety Acts) provision for the arrest of a person for detention without trial. Para 2 (a) of this Article provides for the arrest of a person if such arrest is reasonably considered to be immediately necessary to prevent his committing a crime. This corresponds to our formula of "about to act in a manner prejudicial to the maintenance of law and order etc." and might cover the provisions for arrest for detention without trial.

Article 10 - This Article seeks to bar imprisonment as a punishment for breach of civil contracts. The Law Ministry will be able to comment on this.

Article 12 - This provides that no alien legally admitted to the territory of the State shall be arbitrarily expelled therefrom. The word 'arbitrarily' seems to provide sufficient cover for any action for deportation of a foreigner that the State may take and there is no objection to the Article as it stands.

Article 21 - This is a useful provision. Had it been in force some years ago, it would have enabled the enactment of a law to prohibit propaganda in favour of the two nation theory of the Muslim League. This is welcomed.

Article 22 - This follows Article 33 of the Draft Declaration and should stand.

p65 of Doc. E/600 Sec 'D'

4. QUESTION OF IMPLEMENTATION (ANNEXURE C TO REPORT):

This Ministry agrees with the views of the Working Group on Implementation in general subject to the following comments:-

(a) The working group provides that only States but also associations, individuals and groups can petition the Human Rights Commission regarding violation of Human Rights and non-governmental organizations, provided they originate in a country which has ratified the Covenant, can also petition the Commission (para 36 (1) of p.50 of Annexure C). This Ministry however feel that we should not agree to parties other than Member States being given the right to submit complaints regarding the violation of human rights. This seems to have been recognized so far by the Member States of the U.N.O.

(b) The view of the Government of India expressed in September 1947 as regards the nature of the Court to be set up to try cases of violation of human rights, should stand, namely:-

(i) the implementation of any international bill of rights rests with the General Assembly of the United Nations;

(ii) no Court of Human Rights need be established and

(iii) if necessary by suitable enlargement of the functions of the International Court of Justice, the latter may be made competent to advise the General Assembly on questions involving infringements of human rights.

COMPARATIVE STATEMENT OF HUMAN RIGHTS

(Comparision of provisions in the individual Articles)

Draft Constitution of India	Draft International Declaration	Draft International Covenant
Part III - Art 7-8	Art 32	Art 2, 20
Part III - Art 9	Art 3	Art 20, 3
Part III - Art 10	Art 22	-
Part III - Art 13 (1)	Art 17,18,19,10,14	Art 17,18,19,11
Part III - Art 14 - 15	Art 4, 5, 6, 7	Art 5, 9, 13, 14
Part III - Art 17	Art 8	Art 8
Part III - Art 19 (1)	Art 16	Art 16
Part III - Art 23	Art 31	-
Part III - Art 24	Art 14	-
Part III - Art 25	Art 20	Art 2 (c), (d), (e).
Part III - Art 26	-	Art 4
Part III - Art 27	-	Art 2 (a), (b).
Part IV - Art 30	Art 28	Art 6, 7.
Part IV - Art 31	Art 23, 24(2)	-
Part IV - Art 32	Art 26	-
Part IV - Art 33, 34	Art 24, 29, 30	-
Part IV - Art 35	Art 12	Art 15
Part IV - Art 36	Art 27	-
Part IV - Art 38	Art 25	-

Ministry of EA. & CR.
UNO.I.Br.

~~DEPARTMENT/OFFICE.~~ Immediate.

(56)

File No.
Serial No.

Draft ~~xxxxxxx~~ Memorandum ~~xxxxxxx~~

1. Date of despatch.

2. List of enclosures.

No. F.5(68)-UNO.I/47 Dated 16th March 1948.

To

The C.R.Wing (Ministry of EA. & CR.)

Subject:- Report of the Human Rights Commission (Second Session).

~~The undersigned is directed~~ With reference to this Ministry's O.M. No. D.266-UNO.I/48, dated the 4th February 1948 and ~~subsequent~~ reminder No. F.5(68)-UNO.I/47, dated the 3rd March 1948, ~~and~~ the undersigned is directed to request that ~~their~~ comments on the Report may kindly be furnished without any further delay to enable ~~this~~ the Ministry to convene, if necessary, an interdepartmental meeting for formulating the views of the Govt. of India on the ~~said~~ Report and to

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transmit them to the Secretary-General of the United Nations ~~by~~ before the 3rd April 1948.

2. It may, ~~however,~~ be stated for the information of the C.R.Wing that the comments of other Ministries all the concerned have since been received.

D.S.(UNO).

S.84 Corr

S-5 (Small).
MFP—330 S&P—6767-A—(M-609)—26-7-46—20,000 Pads.

(57) 99

D.O.No. F.5(11)-UNO.I/48.

Government of India.
MINISTRY OF EXTERNAL AFFAIRS &
COMMONWEALTH RELATIONS.,

New Delhi, the 18th March 1948

Dear Mrs. Mehta

Sent (53)

With reference to your letter to Mr. Gopala Menon, dated the 29th February 1948, I am desired to inform you that the Third Session of the Commission on Human Rights is scheduled to meet on the 20th May 1948 at Lake Success. The Report of the Second Session of the Commission on Human Rights is at present under the consideration of the Government of India and their views will be communicated to you shortly.

Yours sincerely,
Sd/-. S.Sen,

Deputy Secretary to the Govt. of India.

Mrs. Hansa Mehta,
8-A, Ratendone Road,
New Delhi.

'DASS'

D-11550 CR/48.

(58)

(100)

D962-UNO/47

No. D.582/48-O.S.I.
Government of India,
Ministry of External Affairs
and Commonwealth Relations.
New Delhi, the 19th March, 1948.

UNOFFICIAL MEMORANDUM.

Subject:- INTERNATIONAL BILL ON HUMAN RIGHTS.

Reference your O.M.No.F.5(68)-UNO.I/47 dated 29th January, 1948.

C.R.Wing have gone carefully through the report of the Commission on Human Rights, Document No.E/600 dated 17th December, 1947 and the reports submitted by Mrs.Hansa Mehta and Mr.Masani on the work of the Human Rights Commission and the Special Commission on minorities and discrimination respectively held at Geneva at the close of the year 1947.

2. From time to time we have had occasion to comment on particular aspects of the draft proposals for the formulation of the International Bill of Rights, bearing in mind principally the denial of human rights to Indians outside India. These views are already known to the External Affairs Ministry and Representatives nominated by us on the Human Rights Commission and on the Special Commission for the protection of Minorities and discrimination. The discussions relating to the formulation of a Court on Human Rights have now reached an advanced stage. It is obvious that we cannot go on repeating the same point of view time and again. Our comments at this stage have, therefore, to take into account not only what we should like to be done with regard to Human Rights but what is possible to secure the maximum agreement amongst the nations of the world so as to make the International Bill of Rights and the machinery for implementation generally acceptable.

3. The substance of the discussions so far appears to be the following:

(a) There should be a declaration on Human Rights.

(b) There should be a Convention on Human Rights signed and ratified by Member Nations.

(c) There should be suitable redress for any infringement of Human Rights. Such redress may be by way of

(i) incorporation of the provisions of the Convention on Human Rights in the Fundamental laws of a State ratifying it, and action by such States to see that their national laws cover the contents of the bill, so that no executive or legislative organs or government can over-ride them; and that the judicial organs alone shall be the means whereby the rights of the citizens of the States set out in the Bill are protected.

(ii) petitions to the United Nations by not only States, but individuals and associations.

(d) Establishment of a suitable machinery for the enforcement of Human Rights.

4. As regards the question whether there should be both a declaration and a convention on Human Rights, C.R.Wing's view is in the affirmative. The declaration on Human Rights would have a great moral value and even though not technically as binding as the proposed convention will be, in the nature of a proclamation that all Member States of the United Nations agree to adopt the contents of the declaration as directive principles of State policy. It will be recalled that the same scheme has been adopted in the Draft Constitution for India and it has been decided to lay down directive principles of policy in contra-distinction to justiciable and fundamental rights.

6. As to the contents of the Draft Declaration, the only comments C.R.Wing have is on Article 10. In many countries outside India where there is an Indian population, Indians have been segregated and where they are not segregated, there is a continual attempt to segregate them. The most glaring example of such segregation is in South Africa where Indians are not allowed to move from one Province to another of the Union or to reside in particular areas. The view that the Government of India have held is that this and other forms of segregation

are contrary to fundamental Human Rights and hence opposed to Article 1(3) of the Charter. Indeed it is this contention which forms the basis of their case against South Africa before the General Assembly of the United Nations. C.R.Wing are, therefore concerned to see that any provision relating to freedom of movement within a State, incorporated in the Declaration on Human Rights, should be such as to enable the Indians in South Africa by virtue of it to shake off the restrictions on their freedom of movement and residence. C.R. Wing are afraid that as at present worded, Article 10 of the draft declaration may enable States to continue arbitrary restrictions on freedom of movement within a State and, generally, to continue the policy of segregation in South Africa and in other countries. For example, Article 10 says, "subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security or in general interest, there shall be liberty of movement and free choice of residence within the border of each State." As regards the first part, South Africa contends that it is not contrary to the principles and purposes of the Charter to segregate people of particular races in particular areas. Secondly, Article 10 permits segregation "in the general interest" or on the ground of "security". These are wide enough to place restrictions on free movement of Indians in South Africa and elsewhere. C.R. Wing's suggestion is that except for specific reasons of health or, in a state of emergency, for reasons of security, there shall be complete liberty of movement and free choice of movement within the borders of a State.

6. Apart from the comments in the preceding paragraph, C.R.Wing considers that the Draft Declaration on Human Rights is suitable and meets their point of view on racial discrimination, liberty of movement, etc. etc.

Draft International Covenant on Human Rights:

Draft International Covenant on Human Rights:

7. C.R.Wing have no comments, except those in paragraph 5 above with regard to Article 11 of the Draft Covenant. The other articles appear suitable. Indeed, there is nothing in this covenant which runs counter to our State policy and to the proposed draft constitution for India recently published by the Constituent Assembly.

8. Implementations: C.R. Wing have gone carefully through Annexure C, Part I of Document No.E.600 and are in general agreement with all the conclusions arrived at by the Working Group. C.R. Wing note that the question of setting up of an International Court on Human Rights has been left open by the Human Rights Commission who are awaiting the comments of the Member States. They also note that the Working Group did agree to the setting up of some form of a Court but they were not sure whether it should be a new Court or the functions should be entrusted to the International Court of Justice. C.R. Wing were, in the past, of the opinion that the constitution of a new Court would mean unnecessary duplication and that the present International Court of Justice should be vested with powers of deciding any dispute relating to the infringement of any human rights. After reading Mrs.Hansa Mehta's report, however, they will not insist on this view, considering that the amendment of the Charter is a difficult business and an amendment would be necessary if the International Court of Justice is to be empowered to deal with applications from Associations or individuals regarding the breach of Human Rights. They will, therefore, have no objection if a New Court is set up. C.R. Wing would, however, add that it is not necessary to hurry the setting up of a new International Court on Human Rights or to amend the Charter. They consider that the Standing Committee proposed by the Working Group (at page 53 of Document E.600) promises to prove a most valuable Committee for investigation and settlement of

disputes and cases relating to the infringement of human rights by conciliation. It would probably be worthwhile waiting to see how the machinery of this Committee works under the aegis of the Human Rights functions and thereafter consider the question of a constitution of a new Court on Human Rights. C.R. Wing note that the Working Group has not proposed any exclusive procedure for ~~the~~ redress in this respect and has emphasised the right of the General Assembly and other organisations of the United Nations to discuss and make recommendations in regard to violation of the Convention of Human Rights.

B. Nanda

(B.N.Nanda).
Assistant Secretary to the Govt of India.

To

E.A. Wing of the Ministry of External Affairs and Commonwealth Relations.

(59)

Ministry of EA. & CR.

105

UNO.I. Branch.

IMMEDIATE.

File No.

Serial No.

This ~~Letter~~
Draft/Memorandum
~~Telegram~~

1. Date of despatch.

2. List of enclosures.

No. F.5(68)-UNO.I/47. Dated 20th April 1948.

To

The Ministry of Home Affairs.

The Ministry of Law.

The Ministry of I. & B.

The C.R.Wing of EA. & CR. Ministry.

Reference concluding portion of this Ministry's Office Memo. No. D.266-UNO.I/48, dated the 4th February 1948.

2. It is proposed to hold an Inter-Ministerial meeting on Tuesday, the 27th April 1948 at 11.0 A.M. in the Committee Room of the Ministry of EA. & CR. to discuss the comments received from the Ministries concerned and to

finalize our views on the draft Declaration on Human Rights, etc. contained in Document No. E/600 before these are transmitted to the Secretary-General of the United Nations. The Ministry of Home Affairs, etc. are therefore, requested to send their representative to the Meeting; ~~to place before it their views on this matter~~. The names of the representatives may please be communicated to this Ministry as early as possible.

Sd/ S. Sen
D.S.(IWO).

A Agenda

The comments so far received have been tabulated in the annexure and it is hoped that representation of the Home Ministry etc. may be requested to ~~attend the meeting~~ attend during which they will be in a position to suggest during the meeting, a precise amendments to the articles ~~of the Draft Declaration~~ in which he is particularly interested.

S-5 (Small).
MFP—228 S&P—5707A—(M-636)—13-7-45—200,000 Pads.

Ministry of EA. & CR.
UNO.I.Branch.

~~DEPARTMENT/OFFICE~~

File No.
Serial No.

D.O. Letter
Draft ~~Memorandum~~
~~Telegram~~

1. Date of despatch.

2. List of enclosures.

No. F.5(~~11~~)-UNO.I/48. Dated the 14th April 1948.

To

Mrs. Hansa Mehta,

8-A, Ratendone Road,

New Delhi.

Subject:- Report of the Human Rights Commission (Second Session).

In continuation of my d.o. letter No. F.5(11)-UNO.I/48, dated the 18th March 1948, I am desired to inform you that an Inter-Ministerial Meeting has been called for on Tuesday the 27th April 1948 at 11 A.M. in the Committee Room of the Ministry of EA. & CR. to discuss the comments received from the Ministries concerned

and to finalise the views of the Govt. of India on the Draft Declaration on Human Rights, etc. contained in Document No. E/600 before these are transmitted to the Secretary-General of the United Nations. I shall be grateful if you will kindly make it convenient for you to attend the said meeting.

Yours

S. Sen

D.S.(UN).

S-5 (Small).
MFP—330 S&P—6767-A—(M-609)—26-7-46—200,000 Pads.

(61)

D1375-V 10(2)48

8A Rajendra Prasad Road
New Delhi
21-4-48

Dear Mr. Sen, Sno(60) ~~Submitted separately~~

With reference to your D.O. No F.5(64)-Uno-1/47. I have already informed you that I am leaving for Bombay on the 25th and, therefore, I shall not be able to attend the inter-ministerial meeting if it is to be held on the 27th. If the meeting can be held a little later it may be possible for me to attend it.

I hope you have received my passport which I sent yesterday for the necessary visa etc.

Yours sincerely
Jawaharlal Nehru

Have we need it?

S. Sen 21/4 MA 21/4

(62)

S-16904-CR/48

IMMEDIATE: (11C)

D1415/NOL/48

No.D.1943/48-G.A.
Government of India,
MINISTRY OF LAW.
.....

New Delhi, the 23rd April, 1948.

OFFICE MEMORANDUM:

With reference to the Office Memorandum from the Ministry of External Affairs and Commonwealth Relations, No.F.5(68)-UNO.I/47, dated the 20th April 1948, the undersigned is directed to state that Mr. N.C. Ray, Additional Deputy Secretary in this Ministry, will represent this Ministry at the Inter-Ministerial meeting proposed to be held at 11 a.m. on the 27th April 1948 for finalising the views on the Draft Declaration on Human Rights.

R. Ayyangar

Assistant Secretary to the Government of India.

To

The Ministry of External Affairs
and Commonwealth Relations.

H/

(63) 17043-CB (II)

D1486/48

IMMEDIATE.

No.F.621(3)EPI/48.
GOVERNMENT OF INDIA.
MINISTRY OF INFORMATION AND BROADCASTING.

NEW DELHI, the 24th April, 1948.

OFFICE MEMORANDUM.

S. No (59)

With reference to the External Affairs and Commonwealth Relations Ministry's office memorandum No.F.5(68)-UNO I/47, dated the 20th April 1948, the undersigned is directed to say that Mr. M.A. Husain, I.C.S., Deputy Secretary will represent this Ministry at the Inter-Ministerial meeting to be held on the 27th instant.

S. Prasada

(S. Prasada)
Under Secretary to the
Government of India.

To

The Ministry of External Affairs and
Commonwealth Relations,
NEW DELHI.

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(64)

D-17888-48/49

D1462-V 1007 48

(112)

IMMEDIATE.

No.F.62-1/47-OSIII
GOVERNMENT OF INDIA
Ministry of External Affairs &
Commonwealth Relations,

New Delhi, the 26th April, 1948.

MEMORANDUM

The undersigned is directed to refer to the Ministry of External Affairs and Commonwealth Relations (External Affairs Wing) Memorandum No.F.5(68)-UNO.I/47, dated the 20th April, 1948, and to say that Mr.B.N.Nanda, Assistant Secretary, in this Wing, will attend the Inter-Ministerial meeting to be held on the 27th April, 1948, at 11 A.M. in the Committee Room of the Ministry of External Affairs and Commonwealth Relations.

B. Nanda

(B.N.Nanda)
Assistant Secretary.

To

The Ministry of External Affairs &
Commonwealth Relations (E.A.Wing)

RCM/26.

(65)

(115)

Issue At once

DEPARTMENT/OFFICE. Immediate

File No.

Serial No.

O.S. 29/4

Letter

Draft ~~Memorandum~~

~~Telegram~~ Memo. M/E 115

1. Date of despatch

2. List of enclosures.

No. F.5(68)UNO/48 Dated 30/4/48

To

The Ministry of Law (Th. N.C. Roy)

" " Home Affairs (Th. G.V. Bedeka)

(68) " " " of I & B (Th. S. Prasad)

C.R. Wing. (Th. B.N. Nanda)

N.P. 42 Sri Dalip Singh (Legal Adviser)

A Copy of the minutes of The Inter-departmental meeting on the draft covenant on Human Rights etc. held on the 27th April '48 in ~~this Ministry~~ is sent herewith. ~~Further~~ Comments, if any may kindly be sent by the 3rd May ~~So as to enable this Ministry to forward the same to the Secy. Genl. of U.N. as soon as possible.~~ in time.

Yours
D.S (UNO).

No. 2.30 P 1/5

X already Sent to Home Ptr. Separately. Yesterday. DM

Rs. Ag. Sub. 30/4

Encl. 65. No. (65)

119

Proceedings of inter-Ministry meeting
held on 27th April 1948 at 11 a.m.

.....

Subject:- Bill of Human Rights.

.....

PRESENT:-

Mr. N.C.Roy	....	Ministry of Law.
Sir Dalip Singh Mr. C.S.Jha Mr. S.Sen Mr. B.N.Nanda	....	Ministry of External Affairs and Commonwealth Relations
Mr. G.V.Bedekar	...	Ministry of Home Affairs
Mr. S.Prasad	...	Ministry of Information and Broadcasting.

Mr. Jha presided.

It was agreed that discussions should centre round -

(a) declaration of Human rights;

(b) draft international covenant of Human Rights; and

(c) proposals for implementation,

all of which were circulated in document E/600 of the 17th December 1947 issued by the United Nations. It was, however, decided that as the convention (or covenant) would be a formal document requiring ratification by acceding Governments, a detailed examination of the articles of the covenant should be taken up first.

Detailed examination of the covenant of convention (Annex B at p.30 of document E/600)

Article 1 - The words "civilised nations" might be interpreted differently and should be substituted by "principles of law recognised by the members of the United Nations".

Article 2(a) - It may not be possible to apply all the principles of human rights and fundamental freedoms set down in Part II of the covenant to persons other than citizens of the State. It was pointed out....

that in our own Constitution a distinction had made between persons and citizens in the enjoyment of fundamental rights; certain rights were available to all persons irrespective of nationality whereas others could only be enjoyed by citizens of the State. For example, section 14(protection in respect of conviction for offences), section 15(protection of life and personal liberty and equality before law), section 21 (freedom of religious practice)etc. of the draft Indian Constitution apply to all persons irrespective of citizenship . While section 10(equality of opportunity in matters of public employment), section 13 (freedom of speech and association) etc. guaranteed rights only to citizens of India. The meeting considered that similar distinction will have to be made in the covenant on human rights. It would, of course, always be open for the Governments to confer higher rights than issued under the covenant on non-citizens. In the light of this, article 2(a) cannot be accepted in its present form and should be suitably modified.

Article 3 - Sir Dalip Singh wanted to have it clarified whether the resolutions of the General Assembly referred to in this article would require a 2/3rds or a simple majority. It was generally felt that a decision on this question is left to the General Assembly in each case under article 18 of the Charter and it will probably not be justified to fetter the discretion of the General Assembly.

Article 4 - This was regarded as very important and necessary as enabling the Governments to pass emergency legislation. The instance that the Committee had in view was that of the Public Safety Act which will be protected by this article even though it infringed

.....

certain other articles of the Covenant.

Article 5,6 and 7 - Agreed to.

Article 8 - No comments except (a) that the reference to conscientious objectors in article 8(3)(a) should be omitted altogether. The meeting felt that in any case it had been proved during the last two wars that the number of conscientious objectors was not very large and a provision of this nature might prejudicially affect a State in time of war; and (b) para 8(3)(c) should be omitted. It was felt that such a provision might be twisted to justify exactions of labour such as the old Bethi system in certain parts of India, which are often made from backward communities where such communities exist side by side with more advanced communities. This is the case particularly in Africa where many exactions of this nature are made from Africans on the plea of communal services. The meeting recognised that there was a saving proviso in this article, but felt that in practice such a proviso would not really prove a safeguard. In any case it was felt that we did not need the inclusion of a provision like article 8(3)(c) in India.

Article 9 - The list of cases in which a person can be deprived of liberty should be illustrative and not exhaustive as would appear to be intended in article 9(2).

Article 10 - This article should not apply to contractual obligations undertaken by an individual towards the State.

Article 11(1). This was regarded as a most important article which was unacceptable in its present form. It is of particular interest to Indians in South Africa and other British Colonial countries where segregation of Indians is practised or contemplated. As at present drafted it might be stretched to defend restriction on the movement of Indians (such as in South Africa from one Province to another) and their segregation in particular residential localities. The Government of India have been strongly of the view that there ....

should be no such segregation. This article should be amended to read as follows -

"Subject to any general law not contrary to the purpose and principles of the United Nations Charter and adopted for the specific purpose of security in a state of emergency or for the prevention of epidemics, there shall be liberty of movement and free choice of residence within the borders of each State".

Article 11(2) - This is meaningless without the complementary right of unrestricted entry into another country. It would suit us very well to have a provision to the latter effect incorporated in the Covenant on Human Rights. If this can be secured we need not object to the article; otherwise it is impracticable.

Article 12 - The article should read as follows -

"No alien legally admitted to the territory of a State shall be expelled therefrom except in accordance with the procedure prescribed by law".

Article 13(2) - This article should be amended in the following sense :-

"No person shall be convicted or punished for crime except after trial. Such public trials may be dispensed with when considerations of security and public morals are involved".

Article 14(2) - This is very vague. Presumably the framers had the trail of war crimes in mind. It was felt that there need be no specific provision in the Covenant of Human Rights to cover the trail and punishment of persons guilty of war crimes. Such crimes can be dealt with as has been done after the last war by the victorious powers on principles which have been accepted for codification into international law. In any case, India is not interested in the insertion of this article which had the appearance of being vindictive.

.....

Article 15 - The meaning and purpose of this article is not understood. It should be omitted.

Article 17 - It is understood from the representative of the Information and Broadcasting Ministry that the drafting Committee's text with some modifications had been accepted at the recent Conference on Information held at Geneva, in preference to the text proposed by the United States. Our delegate had supported the amended text proposed by the drafting Committee.

Article 17,18,19 and 20 - These should be applicable to aliens.

Article 21 - Instead of "constitutes an incitement to violence" substitute "with intent to incite violence ".

Article 24(2) - This provision, broadly speaking, means that States which have a federal constitution cannot accede to the Covenant of Human Rights so as to bind the federal units. It contents itself by asking the Federal Government to make a favourable recommendation to the notice of the federal units. The Committee felt that the whole conception of this article was wrong and in its effect it would be mischievous. It ignores the fundamental fact that even in States with a federal constitution it is the Federal Government which always speaks for the whole country in foreign affairs and binds the State to any treaty obligations. If article 24(b) is allowed to remain it will leave a loophole to many Governments not to apply any part of the Covenant of Human Rights on the ground that it has a federal constitution and therefore the Central Government had no jurisdiction over the States in these matters. One can imagine a Government like that of South Africa signing the covenant enthusiastically in the hope that under the cover of article 24(b) its individual provinces like Natal and ....

Transvaal can continue to practise racial discrimination against Indians and Africans. It was felt that this article should be strongly objected to.

Article 25 - For reasons similar to those mentioned against article 24 this article should be strongly objected to. If it is allowed to remain the result will be that the benefits of the Covenant of Human Rights would probably be denied to persons in the Colonies where they are in need of its application. The accession of a metropolitan power or of a State having a federal constituion(vide article 24) should automatically bind the Colonies, Protectorates, trusteeship territories and the constituent units to the Covenant of Human Rights. Otherwise much of the value of the Covenant will be lost.

The individual articles in Part II of the draft International Covenant on Human Rights were discussed with a view to see which should be applicable to citizens of the State and which to aliens also. It was felt that barring articles 17, 18,19 and 20 which should only be applicable to citizens., all articles may apply to aliens as well.

In view of these comments the draft Declaration would also require suitable modification.

IMPLEMENTATION :- The report of the Working Party on Implementation (page 37)document E/600) appointed by the Human Rights Commission was carefully considered. The following questions were discussed in this connection :-

(1) Should provisions for implementation be included in the Covenant ?

(2) Should individuals in a State have the right to complain to the United Nations regarding the infringement of these rights ?

(3) What would be the effect of ratification of this Covenant on the Constitution and other laws of India ?

.....

(4) What should be the most satisfactory machinery for implementation of these rights ?

Regarding (1) the question was raised whether in the existing international alignment of powers it would be to India's interest to agree to a machinery of implementation in the Covenant itself, which might prejudice the position of the Indian Government in the international sphere. It was, therefore, decided that the question of inclusion of the provisions of implementation would clearly depend on the nature of the machinery for implementation. For instance, if implementation was to be achieved by the establishment of an international court on Human Rights there need not be any fear of political influences being brought to bear in the consideratio of any complaint. If, on the other hand, the implementation was left to the General Assembly, such political pressure will not only be present at all stages but are likely to prejudice India's position. It was, therefore, decided that the type of machinery which India would agree to implement these rights should be decided by the Prime Minister.

As regards (2) it was felt that in practice it would be impossible to prevent an individual from making complaints to the United Nations or its relevant bodies. It should, however, be possible to establish some Committee to screen all frivolous and malicious complaints. It is for consideration of the Prime Minister whether such screening committees should be established on an international basis, i.e., to operate from Lake Success or on a regional basis.

As regards question (3) the committee felt that although most of the rights incorporated in the Covenant were also provided for in our new Constitution, it is likely that in some respects minor amendments may have to be made in the Constitution. Central and Provincial laws may also need amendment in the ordinary course. The committee ....

was of the opinion, however, that the difficulties of amending these laws and the Constitution cannot reasonably be used as an argument for objecting to the Covenant of Human Rights of the United Nations.

Question (4) has already been dealt with under (1).

.....

UNO I Branch (3)

(66)

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CONFIDENTIAL
4183

Telegram Grade 'C' No. 4183 dated 1st May 1948
From ..... Foreign, New Delhi
To ..... Indiadel, New York

MOST I M M E D I A T E

Please pass following comments to Secretary General with reference to his Memo No. SOA 17/1/01 dated January 9 on Human Rights. The comments should reach him before Drafting Committee on Human Rights meets third May.

Begins : Covenant on Human Rights Annex B of Document E/600.

Article 1. Substitute "civilised nations" by "principles of law recognised by the members of the United Nations".

Article 2 (a) It will not be possible to guarantee all rights in Part II of Covenant to persons other than citizens of the State. Government of India do not favour application of Articles 17, 18, 19, and 20 to persons other than citizens of the State.

Article 8. Reference to conscientious objectors should in our view be omitted altogether. Specific exclusion of conscientious objectors from compulsory military service laws as contemplated in article 8 (3) (a) may rather tend to encourage conscientious objection in time of war and in any case experience of last two wars shows that the number of conscientious objectors was not too large and did not require any special protection. We also think that Article 8(3)(c) should be omitted as such a provision might be interpreted to justify exactions of labour often made from backward communities under the pretext of communal services.

Article 9. The list of cases justifying arrest should be treated as illustrative and not exhaustive.

Article 10. Should not apply to contractual obligations undertaken by any individual towards the State.

Article 11. The principle of this Article is most important condemning as it does restriction on movements and residential segregation within a State. As at present drafted however it leaves loophole to Governments to apply such restrictions and segregation on the "general interest" which is a wide term. Government of India is strongly of the view that this Article should be redrafted as to leave no manner of doubt and would, therefore, suggest that the expression "for specific reasons of security or in the general interest" should be substituted by "for the specific purpose of security in a state of emergency or for the prevention of epidemics"

Article 12. This article should read as ·

"No alien legally admitted into the territory of a

(123

State shall be expelled there from except in accordance with the procedure prescribed by law".

Article 13. To clause (2) may be added a sentence "such public trials may be dispensed with when considerations of security or public morals are involved".

Article 14. Clause (2) is vague and seems unnecessary to provide for and may be omitted. Cases like war crimes can dealt with ad hoc by the victorious powers whenever they arise in future.

Article 15. The meaning and purpose of this Article are not understood. It may be omitted.

Article 24. Clause (2) is in our opinion inappropriate. It ignores the fundamental fact that in States with Federal Constitution it is the Federal Government which always speaks for the whole country in foreign affairs and binds the State as a whole to treaty obligations. If this clause stands Governments may avoid their obligations undertaken by the Govenant on the ground that they had no jurisdiction over the federal units in particular matters. In our view the only sound proposition tenable in international law is that an acceding State should bind the State as a whole irrespective of its internal Constitution and Article 24 should be amended to give effect to it.

Article 25. For the same reasons we strongly object to this Article in its present form. If it is allowed to remain the benefits of the Covenant may be denied to persons in Colonies where they are in most need of tis application. This Article should also be amended so as to make it clear that ratification by metropolitan power binds not only the metropolitan territory but all other territories such as Colonies, Trust territories and Protectorates for the administration of which such metropolitan power is responsible.

2. Implementation: We agree with the conclusion of the Working Group on Implementation subject to following comments:

(a) The Standing Committee idea is a very good one and should be tried for the purpose not of arbitration but conciliation. A single Standing Committee, however, will not be adequate and should be supplemented by regional committees.

(b) While Government of India have no objection to the establishment of an International Court of Human Rights they consider that we need not set up such a Court in hurry. We should first try the machinery of the Standing Committee with regional committees and watch the results.

(c) We have no objection to individuals and associations petitioning the Secretary-General but suggest that Standing Committee should take notice only of such complaints regarding violation of human rights as affecting

a community or a body of persons generally and not of individual grievances which it is open to the individual to agitate before a court of justice in his own country.

(d) Nothing will be achieved by having an implementation clause in the Covenant if our suggestion of a Standing Committee only for the time being is accepted.

3. These are our provisional comments on the more important Articles of the Covenant and on the question of implementation. We reserve our right to make further comments and suggestions through our representative at the forthcoming session of the Human Rights Commission.

4. We generally agree with the draft Declaration subject to such modifications as may be necessary in the light of our comments on the Covenant. Ends.

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PS to PM (2) UNOI Br (3) FS JSX JS(UNO) DS(UNO) Secy CR Wing

C.P.(11)
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(67) D.O. No D1462-U.N.(D)/48 (125

New Delhi,
3rd May 1948.

My dear Sir B.N.Rau,

Would you kindly see the papers below and favour us with your views on the draft declaration and covenant on human rights?

I also place below a copy of the minutes of the inter-departmental meeting referred to in the note.

I am sorry to rush you but as we have to obtain Prime Minister's orders and thereafter brief our representative to the Human Rights Commission I should be grateful if you could favour us with your views as soon as possible. These papers may kindly be returned with your reply.

With kind regards,

Yours sincerely,

Sd/-
(C.S.Jha)

Sir B.N.Rau, C.I.E.,
Constitutional Adviser,
Council House,
New Delhi.

(68)

D-9195-cl48 126

D1572-c/1948

No. 12/18/8-Public

GOVERNMENT OF INDIA.
Ministry of Home Affairs.
HOME DEPARTMENT.

New Delhi-3: the 14th May 1948

OFFICE MEMORANDUM.

Subject:- Minutes of the inter-Departmental meeting on the draft Covenant on Human Rights etc. held on the 27th April 1948.

Reference EA & CR Ministry's Memo. No. F.5(68)-UNO-I/48 dated 3rd April 1948. The only comment which Ministry of Home Affairs desires to make is on Article 21 of the draft Covenant. For the words "constitues an incitement to violence" we would suggest the substitution of "is intended to or tends to or results in an incitement to violence". These words will cover the intention, the probable effect and the actual effect of the advocacy referred to in the Article.

A V Raman

(A.V.Raman)
Assistant Secretary to the Government of India

To

The Ministry of External Affairs & Commonwealth Relations.

Madnani(L)
1.5.48

(69) D.2/457-CR/48

D1908-UNO/48 (127)

Mr B.S. 17/5

INDIA.

Commonwealth Relations Office,

Circular Despatch H. No. 14

Downing Street.

11 May, 1948.

~~DESPATCH~~ UNO 17/V

Also to Cor.

Sir,

With reference to United Nations document E/600 namely the report of the Drafting Committee of the Human Rights Commission, I have the honour to forward herewith copies of the preliminary comments by the United Kingdom Government on the draft Covenant and on the draft Declaration of Human Rights. I should emphasize that both these sets of comments are strictly provisional. There has been little time for consideration of so complex a matter before the meeting of the Drafting Committee of the Human Rights Commission on 3rd May. But in order to assist that body as much as possible the United Kingdom Government have despatched the enclosed documents. As regards the annex to the comments on the Covenant in relation to Article 14, this is drafted from the original United Kingdom draft Bill of Rights which is reproduced as Article 17 in the Covenant drafted by the working group of the Human Rights Commission.

THE MINISTER FOR EXTERNAL AFFAIRS
INDIA.

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2. The preliminary comments of the United Kingdom Government on the question of "Implementation" have not yet been completed.

I have the honour to be,
Sir,
Your most obedient,
humble servant,

Philip Noel-Baker

Enclo. to S. 69

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PRELIMINARY COMMENTS ON THE DRAFT COVENANT FOR TRANSMISSION TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

Article 1. The words "among the" appear to be unnecessary and might be deleted. Without these words there is no implication that the principles in Part II are all the human rights and fundamental freedoms founded on the general principles of law of civilised nations or that they are not.

Article 2(b). This paragraph merely seems to repeat the sense of Articles 1 and 2(a). If that is so, it might be omitted altogether. If it is meant to express some other thought, this should be made clear.

Article 3. It is suggested that the last two lines should be redrafted as follows:-

"Supply an explanation certified by the highest legal authorities of the state concerned as to the manner in which the law ...."

The inclusion of this sentence would provide an additional safeguard in ensuring that the information supplied is accurate and reliable.

Article 7. The present text cannot, with its use of the subjective terms "cruel or inhuman" in the 2nd half of the phrase, be included in a legal instrument such as the Covenant.

It is suggested that the first step should be to determine, perhaps by discussion in the Drafting Committee, the exact nature of the idea underlying the present text.

Article 8(2). It is common practice for courts simply to sentence offenders to imprisonment and the question of what work prisoners do while in prison is, as a rule determined by the general prison regime, in which the capacity and the interests of the prisoner are taken predominantly into consideration.

The following text is therefore suggested instead of the present text:-

"No person except in the course of serving a sentence imposed by a competent court, shall be required to perform forced or compulsory labour".

Article 9(1). This is a provision, which may be suitable for the Declaration, but being governed by the subjective word "arbitrary" is unsuitable for the Covenant.

It is suggested that this paragraph be deleted since the following paragraphs of the article contain the precise obligations.

In connexion with Article 9(2) the restrictions, which can be placed on persons having dangerous infectious diseases, should be borne in mind.

Article 10./

(130)

Article 10. The words "or held in servitude" suggest that in certain circumstances a person may be held in servitude, a position which would of course contradict the provision in Article 8(1). It is suggested therefore that the words mentioned be deleted.

The point at issue in this Article is that no person should be imprisoned merely on the grounds of the breach of contractual obligations. In order to bring this point out more clearly the following redraft is suggested:

"No person shall be imprisoned merely on the grounds of a breach of contractual obligation".

Article 11(1). The first two and a half lines of this paragraph appear unsuitable for inclusion in the Covenant. They contain such a wide and subjective exception that the provision is left without any sufficiently definite legal content. It is suggested that further careful consideration be given by the Drafting Committee to the implications of this text in order to see if it is possible to produce a provision, which will have a sufficiently precise meaning and yet will not prevent restrictions by states, to which on "human rights" grounds no objection can reasonably be taken. Further, in so far as such reasonable restrictions are specified here, there will inevitably be close connexion between them and the provision in Article 9, seeing that temporary detention may be necessary to enforce such restrictions.

Article 11(2). Apart from obligations with regard to national service, there may be other ones, such as obligations relating to taxation or the maintenance of dependents, of which account should be taken here.

It is suggested that the text would be more acceptable, if it were redrafted on the following lines:

"..... National Service or against whom a judicial order restraining his departure without giving security has been made on account of other alleged outstanding obligations shall be free to ....."

Further in this connexion it must be noted that it is sometimes desirable to protect primitive or unsophisticated communities from exploitation abroad by imposing controls on emigration.

Further controls may be imposed on emigration to assist a neighbour country to control illegal immigration.

Article 12. The present text dependent as it is on the subjective word "arbitrarily" is unsuitable for the Covenant. The United Kingdom representative on the Drafting Committee will be ready to collaborate with his colleagues to see if a text sufficiently precise for the Covenant can be found, which will be generally acceptable.

Article 13(2). Logically speaking this paragraph should come before Article 13(1) and therefore it is considered first.

The/

The following alternative sentence might replace the original one. The reason for this amendment is that in some countries portions of a trial are held in camera in certain circumstances.

"No person shall be convicted or punished for crime except after trial, which shall be public, though certain portions of it may be held in camera for reasons of public security.

In some countries portions of a trial may be held in camera for reasons of morality decency or in the interest of juvenile offenders".

Article 13(1). There are certain administrative tribunals of first instance in the United Kingdom dealing with particular matters (such as the right to unemployment benefit or applications for deferment of national service on grounds of exceptional hardship), where the assistance of legal advocates is not permitted. Such cases are however outside the scope of this Covenant. It is preferable therefore to confine this text to the sphere of human rights and to redraft it for the purpose as follows:

"In the determination of any criminal charge against him or in the vindication before the courts of any of the human rights provided for in this Covenant every person is entitled to ....."

Article 15. The exact intention of this provision is not understood. "Deprivation of juridical personality" may convey some defined meaning in relation to some systems of law, but some other rendering is required to make the provision generally intelligible. It is only after further elucidation that the United Kingdom will be able to reach any conclusion with regard to this provision.

Article 19. The third line might be amended as follows to improve the drafting:

"of their legitimate interests or for the promotion of any other lawful object".

Article 20. The meaning of the second sentence, which is no doubt intended to express something additional to the first sentence, is not clear and the sentence should be redrafted as necessary.

In any case the adjective "arbitrary" renders the sentence too subjective to be suitable for the Covenant.

Article 22.

(1) In the first place the inclusion of the words "or state" here seems to be unsuitable. The Covenant is an instrument for securing certain rights for individuals, thereby limiting the freedom of action of states. There is

nothing/

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nothing in this part of the Covenant giving any right to a state at all. It is merely a question of how far as the result of this Covenant, the liberty of action of states in a sphere which may hitherto have been within their domestic jurisdiction is now circumscribed. It is thought that in any case the words "or state" should be omitted.

In the second place considerable doubt is felt as to the present form of this provision even with these words omitted. Reference is made to the United Kingdom Bill of Rights, Article 14(3) and Comment B. to that provision (a copy of each is at Annex 2). It may be thought desirable specifically to ensure that the right of freedom of expression which is given in that provision does not include the right to express and publish matter directed to the suppression of human rights and fundamental freedoms themselves. This is logical but, as the aforesaid comment indicated, it is questionable whether use could not be made of this safeguard to impose an undesirable restriction on the freedom of expression. If some such safeguard is included in the Article dealing with Freedom of Expression, the same limitation would also apply automatically to the right of assembly, Article 18, and to the right of association, Article 19. The restriction will therefore apply to the only three rights provided for in the Covenant, which could by any conceivable possibility involve a right to engage in activity aimed at the destruction of the rights and freedoms prescribed herein. Therefore, if this restriction is to be inserted at all, it is thought that the right place to insert it is in the Article relating to Freedom of Expression. If, however, it is inserted as a general provision at the end it becomes a qualification to every provision in the Covenant, including, for instance, the provisions of Articles 5, 6, 7, 8 and 9, and therefore might be invoked as a ground for departing in a particular case from the provisions of these other Articles which would make a very dangerous inroad into the provisions of the Covenant as a whole. Even if an individual is engaged in an activity for the suppression of human rights, he should still have the benefit of Article 9 etc.

Article 23(2). It is suggested that the question of whether or not two-thirds of member states should ratify the bill, before it comes into force, should be considered in relation with the provisions for "implementation", or more accurately since that term implementation seems to be used to cover both (1) execution and (2) enforcement, in connexion with enforcement, and that the figure "two-thirds" should be omitted from the text for the time being.

Article 24. The present text appears unacceptable. It is suggested that the Federal Clause and the Colonial Clause be drafted on similar lines, since the reasons for both clauses are similar and there is no reason why wider latitude should be given in connexion with federations than in connexion with colonies. A redraft combining Articles 24 and 25 is therefore submitted:

"(1) /

"(1) Upon the deposit of the instrument of accession in respect of any state, the present Covenant shall, subject to Article 23, thereupon apply

(1) to the metropolitan territory of the state; and
(2) in the case of a federal state, to the jurisdictional sphere therein of the federal authorities.

(2) Each state which has deposited an instrument of accession shall at the earliest possible moment seek the consent of

(1) the governments of the non-metropolitan territories for whose foreign relations it is responsible, and
(2) (if it is a federal state) the governments of the constituent elements of the state,

to the application of the Covenant to such non-metropolitan territories or constituent elements.

(3) The present Covenant shall thereafter apply in respect of:-

(1) any non-metropolitan territory for whose international relations the state is responsible, and
(2) the jurisdictional sphere of any constituent element of the (federal) state,

which is named in a notification of application addressed by the state to the Secretary-General of the United Nations".

Article 26. A consequential amendment of the words "two-thirds" will probably be necessary, if an amendment is made to Article 23(2).

Article 27. The meaning of this Article is not clear. It should be redrafted with this aim in view.

In any event it appears out of place and should come at the end of Part II.

Article 14.

INTERNATIONAL BILL OF HUMAN RIGHTS

(1) Every person shall be free to express and publish his ideas orally, in writing, in the form of art, or otherwise.

(2) Every person shall be free to receive and disseminate information of all kinds, including both facts, critical comment and ideas by books, newspapers, or oral instruction, and by the medium of all lawfully operated devices.

(3) The freedoms of speech and information referred to in the preceding paragraphs of this article may be subject only to necessary restrictions, penalties or liabilities with regard to: matters which must remain secret in the interests of national safety; publications intended or likely to incite persons to alter by violence the system of Government, or to promote disorder or crime; obscene publications; /publications aimed at the suppression of human rights and fundamental freedoms/; publications injurious to the dependence of the judiciary or the fair conduct of legal proceedings; and expressions or publications which libel or slander the reputations of other persons.

Comment to Article 14.

The fundamental provisions of the Bill of Rights relating to freedom of speech and information will be completed by other agreements, resulting from the work of the sub-committee on Freedom of Information and the international conference on this subject.

Comments to Article 14 (3).

(a) The provision in paragraph 3 above, recognising the right of Governments to impose the necessary restrictions, penalties or liabilities on publications likely or intended to incite persons to alter by violence the system of government, is to be interpreted as strictly confined to such publications as advocate the use of violance, and does not apply to publications advocating a change of government or of the system of government by constitutional means.

(b) Some doubt as to the suitabilty of the words "publications aimed at the suppression of human rights and fundamental freedoms" from the point of view of drafting. It may be that these words afford a wider power for the limitation of freedom of publication than is necessary or desirable. On the other hand, it may be said that it would be inconsistent for a Bill of Rights whose whole object is to establish human rights and fundamental freedoms to prevent any Government, if it wished to do so, from taking steps against publications whose whole object was to destroy the rights and freedoms which it is the purpose of the Bill to establish. In the last analysis, perhaps, the best definition of a Nazi or Fascist régime is that it is a régime which does not recognise the dignity and worth of the human person and permit individuals to enjoy human rights and fundamental freedoms.

(c) In any case it will be observed that no Government is obliged by the Bill to make use of the powers of limitation which are provided in paragraph 3.

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Written Comments on the Draft Declaration of the International Bill of Human Rights for Communication to the Secretary-General of the United Nations.

General Comments.

There are three General Comments which His Majesty's Government in the U.K. (hereafter referred to as H.M.G.) wish to make at the outset.

a) The assumption on which His Majesty's Government have been studying the Draft Declaration is that it is a statement of ideals, a goal towards which mankind should strive, and in no way a document creating binding legal provisions, such as the Covenant. His Majesty's Government consider it important therefore that this point should be given due prominence, preferably both in the preamble to the text of the Declaration and in the text of the Assembly Resolution (see Part II(2) of the draft resolution at Appendix I of His Majesty's Government's written comments on Implementation) which will embody the General Assembly's approval both of the Declaration and of the Covenant.

A text on the following lines would meet the case:

As regards the Preamble:

"The states party to the Declaration on Human Rights reaffirm their faith in the principles of Fundamental Freedoms and Human Rights set out therein and solemnly declare that they will strive to realise this statement of ideals, having due regard to the safeguards required by their security, public order and general welfare".

(b) His Majesty's Government second comment is that the Draft Declaration should be throughout in declaratory and not in mandatory form. This would be more in accordance with the purpose of the Declaration, which is to be a statement of ideals.

(c) The last comment, which His Majesty's Government wish to make, is that Delegates of member states should agree, one and all, to try and keep the text of the Draft Declaration short, inspiring and on the lines, for instance, indicated in the United States Draft Declaration, (pages 25 and 26 of Document E/600). There are a number of provisions in the existing text which are too detailed and verbose to be suitable for a declaration and are yet too loose to be suitable for a covenant. (See also paragraph 50 of E/600)

Detailed Comments.

Preamble. This point has hardly been considered by Delegations as yet and it is assumed that it will be given careful attention by the Drafting Committee. In (a) of the previous paragraph His Majesty's Government have offered a suggestion for the preamble.

/Article 1.

Article 1. Attention is drawn to the resolution of the Economic and Social Council passed on the 3rd March, 1948, which recommends to the Human Rights Commission the following amendments:

"All people are born of free and equal in dignity and rights. They are endowed by nature with reason and conscience and should act towards one another in the spirit of brotherhood".

It is suggested that the amendment be accepted, but that the word "persons" be used in lieu of the word "people", as being more appropriate to the language of a Bill.

Articles 2 and 3

It would be preferable if the order of Articles 2 and 3 were reversed.

Article 2. Member states will probably agree that there exist diverging interpretations about the meaning of the phrase "just requirements of the democratic state."

It is suggested, therefore, that the following draft, which omits any mention of the words "democratic state" and which appears to be more in accordance with the language and spirit of a Draft Declaration should be inserted in lieu of the present text:

"The just claims of the State, which all men are under a duty to accept, must not prejudice the respect for man's right to freedom and equality before the law and the safeguard of Human Rights, which are primary and binding conditions of all just Government.

In the exercise of his rights everyone must recognise the rights of others and his obligations to society so that all may develope their spirit, mind and body in wider freedom".

Article 3(1). A shortening of this text by the Drafting Committee would be welcomed by His Majesty's Government.

Article 3(2). Many member states will probably find it difficult to accept this provision. The following redraft is suggested in lieu of the present text in the hope that it may find more general acceptance:

"All persons are entitled to equal protection of the law against any act of arbitrary discrimination, regardless of the office or status of the person, who commits such an act of arbitrary discrimination".

Articles 4 and 5. If Article 4 is accepted, as appears to be reasonable, Article 5 seems unnecessary.

Articles 6 and 7.

The following text is suggested as a drafting improvement instead of the original one which seems to fall half way between language appropriate for a Declaration and a Covenant.

"Any

"Any person is presumed to be innocent until proved guilty. Everyone shall be entitled to a fair hearing.

No-one shall be subjected to torture or to inhuman indignity".

Article 8.

The following more comprehensive text is suggested in lieu of the present one:

"Slavery or enforced servitude in any form being inconsistent in the....."

Article 9. This Article appears to include a number of unrelated elements. The points concerning the family, it is suggested, should be omitted and should be dealt with in the context of Article 13.

As regards the remaining points the following redraft is suggested as representing an improvement on the original text:

"There shall be respect for the sanctity of the home and for the privacy of correspondence. The law shall afford protection for a person's good reputation".

Article 10(1). The beginning of the present "Subject .....general interest" seems inappropriate for a declaration of ideals while yet being too imprecise for a covenant. The following redraft is suggested in lieu of the original:

"There shall be liberty of movement and free choice of residence within the borders of each state".

Article 10(2). The meaning of the second line of this paragraph is not clear. His Majesty's Government have assumed that it aims at ensuring that "everyone has the right to divest himself of his nationality, if he wishes to do so".

His Majesty's Government are not convinced of the need to include a provision covering the above point. If the majority of other member states should wish it, however, His Majesty's Government would suggest a provision on the lines indicated above.

Article 11. A number of member states will probably find it difficult to accept the present formula His Majesty's Government wish to suggest the following text in lieu of the original one:

"Everyone shall have the right to seek and may be granted asylum from political, racial and religious persecution".

The second sentence of this Article should be omitted altogether. A criminal seeking refuge is not a person seeking asylum from persecution. A prohibition against

/giving

giving refuge to criminals is hardly suitable in this Declaration of ideals.

Article 12. It is suggested that this Article would fit more appropriately higher up in the text of the Declaration, i.e. before Article 4.

Article 13. It is suggested that this Article be simplified and recast as follows:

"The family deriving from marriage is a natural and fundamental unit of society.

(ii) Marriage and the family should be protected by law.

(iii) Men and women shall have equal rights to contract or dissolve marriage in accordance with the law.

(iv) Marriage shall not be contracted before the age of puberty and without the full consent of both intending spouses."

(N.B. (iii) above is in accordance with a resolution adopted on the 3rd March last by the Economic and Social Council. (It was originally suggested by the Commission on the Status of Women)).

Article 14(1). It is suggested that the following draft would be more appropriate in the Declaration:

"Everyone has the right to own property". The meaning of this text is that some right of ownership of private property is regarded as an essential human right. It is not intended to mean that every sort of property must be susceptible of private ownership.

Article 15(1). The meaning of this Article is not clear. It is assumed that it refers to stateless persons and that it endeavours to provide that no persons may be deprived of the right of holding the nationality he has possessed at birth, unless he has obtained another nationality. If the above interpretation is the correct one, it is suggested that the text should be redrafted as follows:

"Persons shall not be deprived of their nationality, which they have acquired at birth, unless possessing another nationality".

Article 15(2). The text of this paragraph is also not very clear. It appears no longer to concern stateless persons only, but to be mainly directed to the protection of refugees from Governments, of which such refugees are nationals, but whose protection they no longer enjoy.

If the above is the correct interpretation of the meaning of this text, before commenting on the suggestions made, His Majesty's Government would like to know the nature and the scope of the protection, which it is suggested the United Nations might be expected to extend to such persons, and

/secondly

secondly the manner in which this protection should be exercised. It is questionable if this should be adopted as an ideal unless and until there is some general agreement on these points.

Articles 16(2), 17, 18 and 19.

It is suggested that all the above mentioned articles could be amalgamated and that the provisions contained in them could be set out more concisely and shortly in the following redraft:

"There shall be freedom of religion, of expression of opinion, and of peaceful assembly".

Article 20. The meaning of this Article is not clear, but, if it has been correctly understood, it would seem to raise a problem of considerable difficulty.

Anybody may send a petition to the United Nations by post, but the substantial questions are

(1) whether he is to be immune from penalties and liabilities for so doing and if so under what conditions,

(2) what will be done with the petition when received.

As indicated above the intention of the provision is not clear. It may refer to the right of making petitions with regard to the operation of the Declaration. As it is however questionable whether it is appropriate to have any system of petition in respect of the operation of the Declaration, since petitions are in the nature of enforcement measures and the Declaration is a Declaration of Ideals, not calling for enforcement.

This Article, however, may aim at providing that everyone shall have the right to petition the head of his state and the United Nations on matters arising under the Covenant. If that is the intention the Declaration is not the place to deal with it.

It may be however that the intention of Article 20 with regard to petitions is not so much to create a right to petition with regard to the fulfilment of the Declaration, or the Covenant, but to create a right to petition a Head of a State and the United Nations about any matter, as a fundamental right. If this is the proposal, it demands most careful consideration.

Let us distinguish here between the two problems raised, namely the petition on any matter addressed to the Head of the State and the similar petition addressed to the United Nations. As regards the former, a petition addressed to the Head of a State is a thing essentially different from a petition addressed to an extraneous organisation, whatever it may be since in the former case the whole matter is a domestic one.

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The right to petition the Head of a Government with a high measure of immunity is part of the longstanding law and practice in the United Kingdom His Majesty's Government would have no special observations on this point.

As regards the petition on any matter to the United Nations, this is a more complicated problem. As stated above, creating a right to petition means in effect to provide the right of privileged communications from individuals in an indefinite field. The right could not be unconditional. Such communications might be the means of transmitting the most secret information contrary to national security. It might be the means of transmitting enticement to committing offences.

It is questionable whether it would be right for the United Nations to hold itself out as a recipient of a petition on any conceivable subject irrespective of whether the subjects come within its scope or not. To create the right to petition on any matter might be held to connote a corresponding right of interference by the United Nations in an internal matter of a state.

The distinction between internal petitions and petitions to the United Nations is thus a profound one. Apart from the consideration mentioned one must recall other problems such as the possibility of a petitioner including matter, which is libellous or otherwise transcending the limits laid down in the Covenant on freedom of expression, the system of sanctions to be set up, the protection which a petitioner may enjoy under the law and the degree of confidentiality, in which petition will be dealt with at the United Nations.

In the circumstances it is suggested that it would be preferable to consider only the question of the right to petition the United Nations with regard to the various subjects with which the United Nations deal and to consider in connexion with each of these subjects, whether there should be a right to petition and what, if any, should be the machinery for dealing with these petitions.

Article 21. In view of Article 3(1), it is suggested that the words "without discrimination" in the first line should be omitted.

Article 23. Sub-paragraph (1) is not clear in that it does not distinguish between the right to do work and the right to receive maintenance. Sub-paragraphs (2) and (3) furthermore do not appear to represent a suitable provision for inclusion in the Declaration. It is suggested therefore that this Article should be redrafted as follows:

"Everyone has the right to work or maintenance".

Article 24(2) Equal enjoyment of all human rights and fundamental freedoms is already provided for in Article 3(1). Furthermore there is no reason for singling out at this point "women", whose rights equal to mans should

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be considered as implicit in the expression "Human Rights". It is suggested therefore that this provision be omitted.

Article 25. It is suggested that the words "without restriction to economic and social conditions" in the first line should be omitted as this point is already provided for in Article 3.

His Majesty's Government would also appreciate an attempt at stating this provision in a more concise fashion.

Article 26. The right to social security referred to in this Article expresses in a general way matters, which are covered in Articles 23 to 26. There appears also to be an overlapping of ideas in Article 23 to 26.

His Majesty's Government hope that the Drafting Committee will agree to redraft this section by

(a) bringing the phrase "Everyone has the right to social security" higher up in the text of the Declaration and then

(b) continuing by some words to the effect that social security includes certain other matters and

(c) then specifying the provisions in question.

Article 27. It is suggested that the words "without distinction as to..... " to the end should be omitted as the point in question is already dealt with in Article 3(1).

Article 29.(2) It is suggested that this provision is too verbose and detailed for inclusion in the Declaration, and that it should be omitted altogether.

Article 31. His Majesty's Government propose the following text as an alternative:

"Minorities shall be entitled to preserve their culture, religion, and language".

Article 32. The meaning of this Article is not clear, as the purpose of the Declaration and of the Covenant is to carry out the provisions of the Charter regarding Human Rights. If the laws of member states are therefore in conformity with the Declaration and the Covenant, they must ex hypothesi be in conformity with the principles of the Charter in so far as these deal with Human Rights.

Article 33. Please see His Majesty's Government's comments on the corresponding provision in the covenant. The provision seems to be out of place altogether in the Declaration.

(70) Ministry of E.A and C.R. (E. A. Wing) 142.

~~DEPARTMENT/OFFICE~~.

File No.
Serial No.

Office ~~Letter~~
Draft Memorandum
~~Telegram~~

1. Date of despatch.
2. List of enclosures.

No. F.5(60)-UNO-I/47 Dated 1.6.48

To.

The Ministry of Home Affairs
The Ministry of I & B
The Ministry of Law.
C.R. Wing, Ministry of EA & CR

Subject :- Draft Covenant and draft declaration of Human Rights.

—x—

With reference to the correspondence resting with this Ministry's Memo. No. F.5(60)-UNO-I/47, dt - 30.4.48 the undersigned is directed to enclose copy of a letter from the Commonwealth Relations Office, London, No. 14, dt - 11.5.48 together with its enclosures for information.

Yours
S. Sen.
Deputy Secretary (UNO)

Appx. to C Corr.

United Nations | Nations Unies

ECONOMIC AND SOCIAL COUNCIL | CONSEIL ECONOMIQUE ET SOCIAL

UNRESTRICTED

E/600
17 December 1947

ORIGINAL: ENGLISH

REPORT OF THE COMMISSION ON HUMAN RIGHTS

SECOND SESSION

Geneva, 2 December to 17 December 1947

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/CHAPTER I

CHAPTER I

INTRODUCTION

1. The Second Session of the Commission on Human Rights opened on Tuesday, 2 December 1947, at the European Headquarters of the United Nations, Geneva, Switzerland. The Commission held twenty-three Plenary Meetings and terminated its work on Wednesday, 17 December 1947.

2. The following Representatives of Member Nations on the Commission attended:

Chairman:		
Mrs. Franklin D. Roosevelt	(United States)	Representative
Rapporteur:		
Dr. Charles Malik	(Lebanon)	Representative
Col. W. R. Hodgson	(Australia)	Representative
Mr. Fernand Dehousse	(Belgium)	Representative
Mr. A. S. Stepanenko	(Byelorussian Soviet Socialist Republic)	Representative
Senator E. Cruz-Coke	(Chile)	Alternate
Dr. C. H. Wu	(China)	Alternate
Mr. Omar Loutfi	(Egypt)	Alternate
Prof. René Cassin	(France)	Representative
Mrs. Hansa Mehta	(India)	Representative
Mr. A. G. Pourevaly	(Iran)	Alternate
Mr. M. Amado	(Panama)	Alternate
Brig.-Gen. Carlos P. Romulo	(The Philippines)	Representative
Mr. Michael Klekovkin	(Ukrainian Soviet Socialist Republic)	Representative
Mr. A. E. Bogomolov	(Union of Soviet Socialist Republics)	Representative
Lord Dukeston, C.B.E.	(United Kingdom)	Representative
Mr. Juan J. Carbajal Victorica	(Uruguay)	Alternate
Dr. Vladislav Ribnikar	(Yugoslavia)	Representative

3. The following Representatives of Specialized Agencies were also present at the session:

Mr. J. de Givry) Mr. P. de Briey, and) Mr. J. Bessling)	International Labour Organization
Mr. J. Havet	United Nations Educational, Scientific and Cultural Organization
Miss M. Barblé, and) Dr. P. Weis)	Preparatory Commission for the International Refugee Organization

/4. The following

4. The following consultants from non-governmental organizations were also present:

Category A

Miss Toni Sender	American Federation of Labor
Mr. A. van Istendael and Mr. P. J. S. Serrarens	International Federation of Christian Trade Unions
Mr. Leopold Boissier and Mr. A. R. de Cléry	Inter-Parliamentary Union

Category B

Mlle. E. de Romer	Catholic International Union for Social Service, and the International Union of Catholic Women's Leagues
Mr. O. Frederick Nolde	Commission of the Churches on International Affairs
Mr. A. G. Brotman	Co-ordinating Board of Jewish Organizations
Prof. Norman Bentwich, Mr. Milton Winn, Mr. Eugene Weill and Prof. Paul Mantoux	Consultative Council of Jewish Organizations
Mr. Th. de Félice	International Abolitionist Federation
Mr. J. M. E. Ouchosal and Mr. C. Pilloud	International Committee of the Red Cross
Dr. Eder and Miss van Eeghen	International Council of Women
Mrs. Alva Myrdal	International Federation of Business and Professional Women
Mrs. Gabrielle Duchêne	Women's International Democratic Federation
Mr. John A. F. Ennals	World Federation of United Nations Associations
Dr. F. R. Bienenfeld, Mr. Alex Easterman and Mr. Gerhard M. Riegner	World Jewish Congress

5. Although scheduled to meet on 1 December, the Commission could not open its session before 2 December, owing to the unavoidable delay in arriving in Geneva of the Chairman and several other Representatives.

/6. The Representatives

6. The Representatives or Alternates representing Chile (Senator CRUZ-COKE) China (Dr. C. H. WU), Lebanon (Dr. Charles MALIK), the Philippines (Brig.-Gen. Carlos P. ROMULO), the United Kingdom (Lord DUKESTON) and Uruguay (Mr. Juan J. Carbajal VICTORICA) were unavoidably delayed in reaching the session. Senator CRUZ-COKE participated from the thirty-third to the thirty-seventh meeting; Dr. C. H. WU participated in the thirty-first and following meetings; Dr. MALIK participated in the twenty-eighth and following meetings; Mr. AMADO from the twenty-third to the forty-first meeting; Brig.-Gen. ROMULO from the twenty-ninth to the forty-first meeting; Lord DUKESTON in the twenty-fourth and following meetings; and Mr. Juan J. Carbajal VICTORICA in the thirty-second and following meetings. Dr. C. H. WU was represented at the twenty-third to thirty-first meeting by Dr. Nan-Ju WU. Brig.-Gen. ROMULO was represented at the twenty-eighth meeting by Mr. Salvador P. LOPEZ. Lord DUKESTON was represented at the twenty-third meeting by Mr. A. CAMPBELL.

7. Observers representing the Governments of Greece, Poland, Rumania and Turkey, and the Holy See, attended diverse meetings of the Session.

8. Prof. John P. HUMPHREY, Director of the Division of Human Rights, represented the Secretary-General. Mr. Edward LAWSON acted as Secretary of the Commission.

9. The Commission took note of the Rules of Procedure for Functional Commissions adopted by the Economic and Social Council on 12 August 1947.

10. The Commission adopted the Provisional Agenda (document E/CN.4/22/Rev.2) as its Agenda, with the understanding that the listing of documents in brackets after each item was for information purposes only.

11. In accordance with Resolution 46 (IV) of the Economic and Social Council, the Commission invited the officers of the Commission on the Status of Women to be present and to participate without vote in its deliberations when sections of the draft of the International Bill of Human Rights concerning the particular rights of women were being considered. The Commission on the Status of Women was represented by Mrs. Bodil BEGTRUP, Chairman, and Mrs. E. URALOVA, Rapporteur.

12. The expression of the views of the Members of the Commission is embodied in the summary records of the plenary meetings (documents E/CN.4/SR.23 to 45) and in the summary records (documents E/CN.4/AC.2/SR.1 to 9, E/CN.4/AC.3/SR.1 to 9, and E/CN.4/AC.4/SR.1 to 7) and the reports (documents E/CN.4/53, E/CN.4/56 and E/CN.4/57) of the three working groups.

13. Taking into consideration the necessity for the Drafting Committee to be fully informed of the replies from the Governments before its next meeting on 3 May 1948, the Commission requested the Secretary-General

/(a) to transmit

(a) to transmit this Report to the Governments during the first week of January 1948; (b) to fix the date of 3 April 1948 as the time limit for the reception of the replies from Governments on the draft International Bill of Human Rights, and (c) to circulate these replies to the members of the Commission as soon as they are received.

14. In respect of the report of its third session to the seventh session of the Economic and Social Council, the Commission requested the Economic and Social Council to waive, if necessary, its rule requiring the submission of Reports of Commissions at least six weeks in advance of the session of the Council in which the Reports would be considered.

CHAPTER II

PLAN OF WORK IN REGARD TO THE BILL OF HUMAN RIGHTS

15. The Commission decided, by a majority vote of 10 to 4 with one abstention, to proceed without delay to the consideration of the Articles suggested for inclusion in an International Declaration of Human Rights, contained in Annex F of the Report of the Drafting Committee (document E/CN.4/21); and the Articles suggested for inclusion in an International Convention on Human Rights, contained in Annex G of the same Report.

16. In order to fulfil its mission, the Commission decided to set up three Working Groups immediately, to deal respectively with the problem of the Declaration, the Convention or Conventions, and Implementation. The membership of these Working Groups, as determined by the Chairman with the approval of the Commission, was as follows:

Working Group on the Declaration: The Representatives of the Byelorussian Soviet Socialist Republic, France, Panama, the Philippines, the Union of Soviet Socialist Republics and the United States.

Working Group on the Convention or Conventions: the Representatives of Chile, China, Egypt, Lebanon, the United Kingdom and Yugoslavia.

Working Group on Implementation: The Representatives of Australia, Belgium, India, Iran, the Ukrainian Soviet Socialist Republic and Uruguay.

17. The Working Groups began their work immediately upon establishment, and met simultaneously. The Working Group on the Declaration met nine times, that on the Convention nine times and that on the question of Implementation seven times. When the Commission received the Reports of the three Working Groups (documents E/CN.4/57, E/CN.4/56 and E/CN.4/53) respectively, it decided to examine first the proposed Articles for the Declaration article by article, referring to corresponding Articles in the

Convention wherever such existed.

18. Two titles were frequently used in respect of the documents in preparation, Declaration and Convention. The latter was to be entered into and ratified by governments and not only to be discussed and adopted by the General Assembly. The question arose whether the term "Bill of Rights" was to be applied only to the Convention, or only to the Declaration, or to the two documents taken together. In its night meeting on 16 December 1947 the Commission decided:

(a) to apply the term "International Bill of Human Rights", or, for brevity, "Bill of Rights", to the entirety of documents in preparation; the Declaration, the Convention and the Measures of Implementation;

(b) to use the term "Declaration" for the articles in Annex A of this Report;

(c) to call the Convention on Human Rights embodied in Annex B, "The Covenant on Human Rights"; and

(d) to refer to the outcome of the suggestions embodied in Annex C as "Measures for Implementation", regardless of whether these measures will eventually form part of the Covenant or not.

19. In discussing the Articles for the Declaration and the Convention, the Commission accepted a ruling of the Chairman (which was challenged and upheld) that in order to save time only one person would be recognized to speak for, and only one to speak against, each Article or proposed amendment.

20. It was agreed that every Representative had a right to submit to the Rapporteur, in writing, before the closure of the session, any comment he wished to make upon a particular Article or upon the documents as a whole, for inclusion in the Report, provided that such comment be read first to the Commission.

CHAPTER III

INTERNATIONAL DECLARATION ON HUMAN RIGHTS

21. The Working Group on the Declaration on Human Rights held nine meetings. Mrs. Franklin D. ROOSEVELT (United States) was elected Chairman and Professor Rene CASSIN (France), Rapporteur. The views expressed by the members of the Working Group will be found in its Report (document E/CN.4/57) and in the summary records of its meetings (documents E/CN.4/AC.2/1 to 9).

22. The Report of the Working Group was received and noted by the Commission, and Chapter 3, containing articles suggested for inclusion in an International Declaration on Human Rights, was considered in detail. Members commented

/upon the form

upon the form and substance of the various articles, and proposed alterations. These comments and proposals are found in the summary records. The result of this examination is embodied in Annex A of this Report.

CHAPTER IV

INTERNATIONAL COVENANT ON HUMAN RIGHTS

23. The Working Group on the Covenant on Human Rights held nine meetings. Lord DUKESTON (United Kingdom) was elected Chairman and Dr. Charles MALIK (Lebanon), Rapporteur. The views expressed by the members of the Working Group will be found in its Report (document E/CN.4/56) and in the summary records of its meetings (documents E/CN.4/AC.3/1 to 9).

24. The Report of the Working Group was received and noted by the Commission, and Chapter 2, containing articles suggested for inclusion in an International Covenant on Human Rights was considered in detail. Members commented upon the form and substance of the various articles, and proposed alterations. These comments and proposals are found in the summary records. The result of this examination is embodied in Annex B of this Report.

CHAPTER V

THE QUESTION OF IMPLEMENTATION

25. The Working Group on the Question of Implementation held seven meetings. Mrs. Hansa MEHTA (India) was elected Chairman and Mr. Fernand DEHOUSSE (Belgium), Rapporteur. The views expressed by the members of the Working Group will be found in its Report (document E/CN.4/53 and in the summary records of its meetings (documents E/CN.4/AC.4/1 to 7).

26. The Report of the Working Group was received and noted by the Commission, and the Representatives proceeded to make general comments on it. A summary of these comments is contained in the summary records of the thirty-eighth and thirty-ninth plenary meetings (documents E/CN.4/SR.38 and 39). The Commission decided to take no decision on any specific principle or solution stated in the Report, but to transmit the Report to the Governments of the various States and to the Economic and Social Council for their consideration and comment. Annex C of the present Report reproduces in full the Report of the Working Group on Implementation together with such comments by Representatives as were expressly submitted in writing to the Rapporteur for inclusion in this Report.

/CHAPTER VI

CHAPTER VI

COMMUNICATIONS

27. The Commission received, in private meeting, a confidential list of communications received concerning human rights compiled by the Secretary-General. This list contained a brief indication of the substance of each communication, without divulging the identity of the authors. In accordance with the suggestion made by the Economic and Social Council in its Resolution of 5 August 1947 (Resolution 75 (V)), the Commission decided to establish an ad hoc committee to meet shortly before the third session for the purpose of reviewing the confidential list of communications prepared by the Secretary-General under part (a) of that Resolution and of recommending which of these communications, in original, should, in accordance with paragraph (c) of the Resolution, be made available to members of the Commission on request. The Commission requested the ad hoc committee to perform a similar function during the current session. In addition to the functions for the Committee suggested by the Economic and Social Council, the Commission requested that the Committee should also submit to it a report on the list of communications prepared under paragraph (a) of the Resolution, along with any recommendation it deemed appropriate.

28. The ad hoc Committee held one meeting. Its members were the Representatives of Chile, France, Lebanon, the Union of Soviet Socialist Republics and the United States. Mrs. Franklin D. ROOSEVELT (United States) was elected Chairman, and Prof. René CASSIN (France) Rapporteur. The views expressed by its members are contained in the summary record of that meeting (document E/CN.4/AC.5/SR.1), and in the Report of the ad hoc Committee (document E/CN.4/64). The Commission, having noted that Report, and having noted that in the confidential list of communications transmitted by the Secretary-General there were a considerable number dealing with the principle involved in the promotion of universal respect for and observance of human rights, decided:

(a) to transmit immediately to the members of the Commission an analysis of these communications on general principles prepared by the Secretariat (document E/CN.4/AC.5/2), and

(b) to recommend that the originals of the communications listed in document E/CN.4/AC.5/2 should, in accordance with paragraph (c) of the Resolution of the Economic and Social Council of 5 August 1947, and without prejudice to the powers of the Secretary-General under the same paragraph, be made available to the members of the Commission on request.

/29. The Commission

29. The Commission decided that the task of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities would be facilitated if the Economic and Social Council agreed to modify and extend its resolution of 5 August 1947, so as to give the members of the Sub-Commission, with respect to communications dealing with discrimination and minorities and at the request of the Human Rights Commission in each case, the same facilities as are enjoyed by members of the Commission.

30. The Commission requested the Economic and Social Council to reconsider the procedure for communications relating to human rights laid down in its resolution of 5 August 1947, in particular as regards points (a) and (b). It suggested that the Secretary-General be requested to compile, before each session of the Commission, two lists of communications received concerning human rights with a brief summary of the substance of each; (1) a non-confidential list of communications in which the authors state that they have already divulged or intend to divulge their names, or that they have no objections to their names being divulged; and (2) a confidential list which will be furnished to the Commission, in private meeting, without divulging the identity of the authors of the communications.

CHAPTER VII

FREEDOM OF INFORMATION AND OF THE PRESS

31. The Commission noted the Report of the first session of the Sub-Commission on the Freedom of Information and of the Press (document E/441), which had been submitted directly to the Economic and Social Council in conformity with that Council's Resolution No. 46 (IV) of 28 March 1947.

32. The Commission decided to recommend to the Economic and Social Council the extension of the life of the Sub-Commission on the Freedom of Information and of the Press for one additional year, in order that this Sub-Commission might hold a meeting after the session of the International Conference on Freedom of Information which will open on 23 March 1948.

33. The Commission adopted the following resolution:

THE COMMISSION ON HUMAN RIGHTS:

1. RECOGNIZES that freedom of expression and of information is one of the most fundamental freedoms;

2. AFFIRMS that this freedom must be included both in the International Declaration and in the Covenant on Human Rights;

3. DECIDES, having before it two texts on this subject for inclusion in the International Covenant, one submitted by the United States of America and one by the Drafting Committee, not to elaborate a final text

/until

until it has before it the views of the Sub-Commission on Freedom of Information and of the Press and of the International Conference on Freedom of Information, and remits to the Sub-Commission on Freedom of Information and of the Press these two texts for its consideration, requesting it further:

(a) to take into account the two resolutions of the General Assembly on this question (document A/428, "Measures to be taken against Propaganda and the Inciters of a New War" and document A/C.3/180/Rev.1, "False and Distorted Reports");

(b) to consider the social, economic and political conditions which will render this fundamental freedom real; and

(c) to consider the possibility of denying this freedom to publications and other media of public expression which aim or tend to inflict injury, or incite prejudice or hatred, against persons or groups because of their race, language, religion or national origin;

4. RECOMMENDS to the Economic and Social Council that it remit to the International Conference on Freedom of Information the same documents with idential instructions; and

5. DECIDES to refer Articles 17 and 18 of the draft Declaration to the Sub-Commission on Freedom of Information and of the Press for its consideration and report and to request the Economic and Social Council to refer these Articles to the Conference on Freedom of Information for its own consideration and report.

CHAPTER VIII

THE PREVENTION OF DISCRIMINATION AND THE PROTECTION OF MINORITIES

34. In its thirty-first meeting on 8 December 1947, the Commission noted the Report of the first session of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities (document E/CN.4/52), presented by the Chairman of the Sub-Commission, Mr. E. E. EKSTRAND (Sweden). The comments of the members of the Commission at the time of its presentation will be found in the summary record of that meeting (document E/CN.4/SR.31). The Report was referred to each member for study, and to the three Working Groups for use as they saw fit.

35. As a result of a later examination of this Report, in its forty-third and forty-fourth meetings, the Commission decided to request the Economic and Social Council:

(a) to request the Secretary-General to organize studies and prepare

analyses designed to assist the Sub-Commission in determining the main types of discrimination which impede the equal enjoyment by all of human rights and fundamental freedoms, and the causes of such discrimination, the results of such studies and analyses to be made available to members of the Sub-Commission; and to suggest that in so doing he consider whether or not the groups involved are of recent or long historic origin, and whether or not in the past they have been in the nature of active protesting minorities;

(b) to adopt such measures as are necessary to provide the Sub-Commission, for purposes of its future work, with all information that it might require in order to distinguish between genuine minorities and spurious minorities which might be created for propaganda purposes;

(c) to invite the Secretary-General to keep in mind, in connection with any studies which he might be directed to make in the fields of the prevention of discrimination and the protection of minorities, the desirability of formulating effective educational programmes in thes fields, and to report any findings that might assist the Sub-Commission in making appropriate recommendations to this end;

(d) to advise the United Nations Educational, Scientific and Cultural Organization of the interest of the United Nations in such programmes; to request UNESCO to make available to the Sub-Commission any relevant material or analyses that might result from that Organization's proposed study of social tensions or from any other UNESCO programmes; to suggest collaboration between the United Nations and UNESCO in the formulation of such a programme; and to suggest that UNESCO consider, as a first step, the desirability of initiating and recommending the general adoption of a programme of disseminating scientific facts with regard to race;

(e) to invite UNESCO to consider the creation of a committee of world leaders in educational theory and practice, which should make it its business to study and select the most common and basic principles of a democratic and universal education in order to combat any spirit of intolerance or hostility as between nations and groups.

36. The Commission declared that in any peace treaties not yet concluded there should be included wherever appropriate specific clauses seeking to protect human rights and minority rights.

37. The Commission further decided, in accordance with the request of the Sub-Commission:

/(a) to draw the

(a) to draw the attention of the Economic and Social Council to document C.L.111.1927 (Annex) of the League of Nations, which reproduces a large number of texts of treaties and declarations relating to international obligations undertaken to combat discriminatic and to protect minorities;

(b) to request the Economic and Social Council to consider the question whether, and to what extent, these treaties should be regarded as being still in force, at least insofar as they would entail between contracting States rights and obligations, the existence of which would be independent of their guarantee by the League of Nations; and

(c) to express the view that there is here involved a juridical situation which, owing to its implications and possible consequences, should in any event be elucidated, possibly through a request by the Economic and Social Council for an advisory opinion on this matter from the International Court of Justice.

38. The Commission took note of the Sub-Commission's opinion (a) that the implementation of the rights formulated in those parts of the proposed Declaration and Covenant on Human Rights which deal with the prevention of discrimination and the protection of minorities would be of vital importance, and (b) that the machinery covering this matter formed but one part of the machinery for the implementation of human rights as a whole. In this connection, the Commission requested the Sub-Commission to examine any proposals for Measures of Implementation of the International Bill of Human Rights formulated by the Commission, and to submit to it suggestions in this regard.

39. The Commission approved the following text relating to the prevention of discrimination:*

"The Prevention of Discrimination is the prevention of any action which denies to individuals or groups of people equality of treatment which they may wish."

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* The Representative of Lebanon wishes to note that strictly speaking this statement is incorrect. To make it correct, he suggests the insertion of "reasonable" before "equality" and "justly" before "wish".

40. The Commission decided to postpone until its third session the consideration of the text submitted by the Sub-Commission relating to the protection of minorities (document E/CN.4/52, page 13, Section V (2)).*

41. The Commission requested the Economic and Social Council to make arrangements with the Secretary-General enabling the Sub-Commission to convene at such a time that its findings might be submitted to the Commission well in advance of the date on which they were due for discussion by it, and to prevent any overlapping between the meetings of the Sub-Commission and the Commission.

42. The Commission decided to postpone until its third session the re-examination of the terms of reference of the Sub-Commission.

CHAPTER IX

TRUSTEESHIP COUNCIL QUESTIONNAIRE**

43. The Commission noted the provisional questionnaire prepared by the Trusteeship Council (document T/44), and recommended to the Economic and Social Council the adoption of the following resolution:

"THE ECONOMIC AND SOCIAL COUNCIL,

Having regard for the importance of the Trusteeship Council's Questionnaire in developing standards of social policy; and

Desirous of promoting the widest possible application of the International Bill of Human Rights,

Requests the Trusteeship Council to consider the Human Rights Section at its Questionnaire as provisional until the Commission on Human Rights is able to review it in the light of an approved Bill of Human Rights."

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* For footnote see next page.

** For footnote see next page.

* The Representative of Belgium noted that the definition of minorities contained in document E/CN.4/52 (Section V (2)) is ambiguous. This definition should, in his opinion, apply only to such members of a minority as possess the nationality of the State in which such a minority exists. It should never be extended to apply to aliens, because of the possible dangers that might arise in such a case with regard to the implementation of a proposed system for the protection of minorities.

** The Representative of the Union of Soviet Socialist Republics requested that the following additions be inserted in the Trusteeship Council Questionnaire:

1. Question 138

"How many newspapers are published in the native language of the residents of a given territory?"

2. Question 139

"Are there any films in the language of the residents of a given territory?"

"Are there any regular broadcasts in the language of the residents of a given territory?"

3. Question 140

"What part do the local residents take in such voluntary organizations and in their board of directors?"

"Are there any professional trade unions? Give the number. Give the percentage of workers belonging to such professional trade unions. Give details on the organization and leadership of such trade unions and on the part which the local residents take in such leadership."

4. Question 142

(a) "What part of the budget is allocated to national education in the different localities? Give the number of primary, secondary and other schools. Give the number of professors and, in particular, of professors of local origin. Which language is used for teaching purposes?"

(b) "What part of the budget is allocated to public health in the different localities? How many general and maternity hospitals? What is the total number of hospital beds?"

"To what extent do the local residents make use of the available hospital and maternity facilities?"

"Give the total number of doctors and physicians and indicate how they are distributed over a given territory."

"Are there doctors or physicians of local origin?"

(c) "How is social security organized for local residents?"

"What is the number of local residents among the public officials and employees of a given locality?"

"What is the percentage of vote among the local residents for elections to local public functions or to a director's post in public organizations?"

CHAPTER X

YEAR-BOOK ON HUMAN RIGHTS AND OTHER DOCUMENTATION

44. At the twenty-ninth Plenary meeting of the Commission, the Chairman appointed a Sub-Committee composed of the Representatives of Belgium, Egypt and Yugoslavia, to examine the Year-Book on Human Rights, the Report of the War Crimes Commission, and the question of the study of the evolution of human rights.

The Sub-Committee held one meeting. Mr. Fernand DEHOUSSE (Belgium) was elected Chairman, and Mr. Omar LOUTFI (Egypt) Rapporteur. The views expressed by the members during this meeting are contained in the summary record (document E/CN.4/AC.6/SR.1), and in the Report of the Sub-Committee (document E/CN.4/63). In its forty-third meeting, the Commission considered this Report. This consideration is to be found in the summary record of the meeting (document E/CN.4/SR.43). The Commission amended the first sentence of the second paragraph of Section II to read as follows:

> "This work must include the sentences pronounced at any time in the countries not already included in the document prepared by the War Crimes Commission."

45. The Commission approved the Report of the Sub-Committee with the amendment and transmitted it to the Economic and Social Council.*

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* The Representative of the Union of Soviet Socialist Republics requested that the following proposals, relating to the question of the Year-Book on Human Rights, be included in the Report:

1. That the texts of the laws relating to human rights should be quoted, not in the form of extracts, but more fully.

2. That the extracts from the Constitution of other Soviet Republics be quoted in full, and not in the form of a reference to the Constitution of the Union of Soviet Socialist Republics or to laws applying to the Union as a whole.

3. That among the most important historical documents relating to human rights, be included such statutes as, for instance, the "Declaration of Rights of the Peoples of Russia".

4. That the text of the Decree of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics, dated 26 May 1947, on the Abolition of Capital Punishment in the Union of Soviet Socialist Republics in time of peace, be included in the symposium.

5. That the making of surveys of a strictly international character on the question of the rights of particular countries be entrusted to the experts recommended by the corresponding Governments.

/CHAPTER XI

CHAPTER XI

MISCELLANEOUS RESOLUTIONS

46. Stateless Persons

The Commission considered a Draft Resolution on Stateless Persons proposed by the Working Group on the Covenant relating to Stateless Persons (document E/CN.4/56, page 15). As a result, it adopted the following resolution:

THE COMMISSION ON HUMAN RIGHTS

(1) EXPRESSES the wish:

(a) that the United Nations make recommendations to Member States with a view to concluding conventions on nationality;

(b) that early consideration be given by the United Nations to the legal status of persons who do not enjoy the protection of any government, in particular pending the acquisition of nationalit as regards their legal and social protection and their documentatio

(2) RECOMMENDS that such work be undertaken in consultation with those Specialized Agencies at present assuming the protection of some categories of persons not enjoying the protection of any government and that due regard be paid to relevant international agreements and conventions.

47. Minor Communal Services

The Commission decided to refer paragraph 3 (c) of Article 8 of the Draft International Covenant on Human Rights (see Annex B) to the International Labour Organization for early consideration and report in the light of the Forced Labour Convention of 1930.

48. Right of Asylum

The Commission decided to examine at an early opportunity the question of the inclusion of the right of asylum of refugees from persecution in the International Bill of Human Rights or in a special convention for that purpose.

49. Local Human Rights Committees

The Commission decided that at its next session it would take up, among other things, the functions of the information groups or local human rights committees established within countries in conformity with the Resolution of the Economic and Social Council of 21 June 1946.

50. Declaration on Human Rights

The Commission requested the Drafting Committee, in revising the Draft Declaration on Human Rights in its second session, to make it as short as possible.

/ANNEX A

ANNEX A

PART I

DRAFT INTERNATIONAL DECLARATION ON HUMAN RIGHTS

Article 1

All men are born free and equal in dignity and rights. They are endowed by nature with reason and conscience, and should act towards one another like brothers.

Article 2

In the exercise of his rights everyone is limited by the rights of others and by the just requirements of the democratic State. The individual owes duties to society through which he is enabled to develop his spirit, mind and body in wider freedom.

Article 3

1. Every one is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, (which includes colour), sex, language, religion, political or other opinion, property status, or national or social origin.

2. All are equal before the law regardless of office or status and entitled to equal protection of the law against any arbitrary discrimination, or against any incitement to such discrimination, in violation of this Declaration.

Article 4

Every one has the right to life, to liberty and security of person.

Article 5

No one shall be deprived of his personal liberty or kept in custody except in cases prescribed by law and after due process. Every one placed under arrest or detention shall have the right to immediate judicial determination of the legality of any detention to which he may be subject and to trial within a reasonable time or to release.

Article 6

Every one shall have access to independent and impartial tribunals in the determination of any criminal charge against him, and of his rights and obligations. He shall be entitled to a fair hearing of his case and to have the aid of a qualified representative of his own choice, and if he appears in person to have the procedure explained to him in a manner in which he can understand it and to use a language which he can speak.

Article 7

1. Any person is presumed to be innocent until proved guilty. No one shall be convicted or punished for crime or other offence except after fair

/public

public trial at which he has been given all guarantees necessary for his defence. No person shall be held guilty of any offence on account of any act or omission which did not constitute such an offence at the time when it was committed, nor shall he be liable to any greater punishment than that prescribed for such offence by the law in force at the time when the offence was committed.

2. Nothing in this Article shall prejudice the trial and punishment of any person for the commission of any act which, at the time it was committed, was criminal according to the general principles of law recognized by civilized nations.

3. No one shall be subjected to torture, or to cruel or inhuman punishment or indignity.

Article 8

Slavery, in all its forms, being inconsistent with the dignity of man, shall be prohibited by law.

Article 9

Every one shall be entitled to protection under law from unreasonable interference with his reputation, his privacy and his family. His home and correspondence shall be inviolable.

Article 10

1. Subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security or in general interest, there shall be liberty of movement and free choice of residence within the border of each State.

2. Individuals shall have the right to leave their own country and, if they so desire, to acquire the nationality of any country willing to grant it.

Article 11

Every one shall have the right to seek and be granted asylum from persecution. This right will not be accorded to criminals nor to those whose acts are contrary to the principles and aims of the United Nations.

Article 12

Every one has the right everywhere in the world to recognition as a person before the law and to the enjoyment of fundamental civil rights.

Article 13

1. The family deriving from marriage is the natural and fundamental unit of society. Men and women shall have the same freedom to contract marriage in accordance with the law.

2. Marriage and the family shall be protected by the State and Society.

/Article 14

Article 14

1. Every one has the right to own property in conformity with the laws of the State in which such property is located.

2. No one shall be arbitrarily deprived of his property.

Article 15

Every one has the right to a nationality.

All persons who do not enjoy the protection of any government shall be placed under the protection of the United Nations. This protection shall not be accorded to criminals nor to those whose acts are contrary to the principles and aims of the United Nations.

Article 16

1. Individual freedom of thought and conscience, to hold and change beliefs is an absolute and sacred right.

2. Every person has the right, either alone or in community with other persons of like mind and in public or private, to manifest his beliefs in worship, observance, teaching and practice.

(Concerning the following two Articles, 17 and 18, the Commission decided not to elaborate a final text until it had before it the views of the Sub-Commission on Freedom of Information and of the Press and of the International Conference on Freedom of Information.)

(Article 17)

(1. Every one is free to express and impart opinions, or to receive and seek information and the opinion of others from sources wherever situated.)

(2. No person may be interfered with on account of his opinions.)

(Article 18)

(There shall be freedom of expression either by word, in writing, in the press, in books or by visual, auditive or other means. There shall be equal access to all channels of communication.)

Article 19

Every one has the right to freedom of peaceful assembly and to participate in local, national and international associations for purposes of a political, economic, religious, social, cultural, trade union or any other character, not inconsistent with this Declaration.

Article 20

Every one has the right, either individually, or in association with others, to petition or to communicate with the public authorities of the State of which he is a national or in which he resides, or with the United Nations.

/Article 21

Article 21

Every one without discrimination has the right to take an effective part in the Government of his country. The State shall conform to the will of the people as manifested by elections which shall be periodic, free, fair and by secret ballot.

Article 22

1. Every one shall have equal opportunity to engage in public employment and to hold public office in the State of which he is a citizen or a national.

2. Access to public employment shall not be a matter of privilege or favour.

Article 23

1. Every one has the right to work.

2. The State has a duty to take such measures as may be within its power to ensure that all persons ordinarily resident in its territory have an opportunity for useful work.

3. The State is bound to take all necessary steps to prevent unemployment.

Article 24

1. Every one has the right to receive pay commensurate with his ability and skill, to work under just and favourable conditions and to join trade unions for the protection of his interests in securing a decent standard of living for himself and his family.

2. Women shall work with the same advantages as men and receive equal pay for equal work.

Article 25

Every one without distinction as to economic and social conditions has the right to the preservation of his health through the highest standard of food, clothing, housing and medical care which the resources of the State or community can provide. The responsibility of the State and community for the health and safety of its people can be fulfilled only by provision of adequate health and social measures.

Article 26

1. Every one has the right to social security. The State has a duty to maintain or ensure the maintenance of comprehensive measures for the security of the individual against the consequence of unemployment, disability, old age and all other loss of livelihood for reasons beyond his control.

2. Motherhood shall be granted special care and assistance. Children are similarly entitled to special care and assistance.

Article 27

Every one has the right to education. Fundamental education shall be free and compulsory. There shall be equal access for higher education as can be provided by the State or community on the basis of merit and without

/distinction

distinction as to race, sex, langauge, religion, social standing, financial means, or political affiliation.

Article 28

Education will be directed to the full physical, intellectual, moral and spiritual development of the human personality, to the strengthening of respect for human rights and fundamental freedoms and to the combating of the spirit of intolerance and hatred against other nations or racial or religious groups everywhere.

Article 29

1. Every one has the right to rest and leisure.

2. Rest and leisure should be ensured to every one by laws or contracts providing in particular for reasonable limitations on working hours and for periodic vacations with pay.

Article 30

Every one has the right to participate in the cultural life of the community, to enjoy the arts and to share in the benefits that result from scientific discoveries.

(Article 31)

(The Commission did not take a decision on the two texts below. They are reproduced here for further consideration.)

(Text proposed by the Drafting Committee:)

(In States inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right, as far as compatible with public order, to establish and maintain schools and cultural or religious institutions, and to use their own language in the press, in public assembly and before the courts and other authorities of the State.)

(Text proposed by the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities:)

(In States inhabited by well-defined ethnic, linguistic or religious groups which are clearly distinguished from the rest of the population, and which want to be accorded differential treatment, persons belonging to such groups shall have the right, as far as is compatible with public order and security, to establish and maintain their schools and cultural or religious institutions, and to use their own language and script in the press, in public assembly and before the courts and other authorities of the State, if they so choose.)

/Article 32

Article 32

All laws iny State shall be in conformity with the purposes and principles of the United Nations as embodied in the Charter, insofar as they deal with human rights.

Article 33

Nothing in this Declaration shall be considered to recognize the right of any State or person to engage in any activity aimed to the destruction of any of the rights and freedoms prescribed herein.

ANNEX A

PART II

COMMENTS ON THE DRAFT INTERNATIONAL DECLARATION ON HUMAN RIGHTS

General Comments on the Draft Declaration:

1. Wherever the word "men" is used, the Commission implied both men and women.

2. The Commission decided to suggest the following Article, which appears as Article 25 in the Report of the Working Group on the Declaration, for consideration in connection with the formulation of a preamble to the Draft Declaration:

> "When a government, group, or individual seriously or systematically tramples the fundamental human rights and freedoms, individuals and peoples have the right to resist oppression and tyranny."

3. The Representative of Australia expressed the view, with which the Representative of the United States associated herself, that the language of the articles of the Declaration is confused in that it is both declaratory and mandatory. He felt that as it had been agreed that the Declaration imposes no legal obligation and requires no measures for implementation, it should be drafted in declaratory form only, or in the present indicative sense. For this reason he felt that Article 38 proposed by the Working Group (document E/CN.4/57, page 17) was out of place, since it appeared to be applicable only to the Covenant on Human Rights. The Representative of Australia suggested some such wording as "No one is to be deprived of..." or "Everyone has the right...." should be used in articles of the Declaration; and that the wording of every article in the Covenant should be in mandatory form.

4. The Representative of France withdrew the following two amendments which he had proposed:

> Article 38. "A system of effective judicial and administrative appeal shall be organized by each State for the purpose of penalizing violations of these principles."
>
> Article 39. "The United Nations recommends...all the International Conventions and would take, with the assistance of Member States, all necessary steps to give full effect to the provisions of the Charter and of the present declaration, in order to safeguard these rights and freedoms throughout the world."

This withdrawal was dictated solely by the desire to reserve for a suitable stage all discussions concerning the "implementation" of human rights, both in the Declaration and the Convention or Conventions to follow.

/5. The

5. The Representative of France requested that the following comment be inserted in the Report:

"In voting for the draft Declaration, the French delegation emphasized that it constitutes the first stage reached after eighteen months work. Its defects do not detract from the fact that it contributes something new: the individual becomes a subject of international law in respect of his life and liberty; principles are affirmed, side by side with those already laid down by the majority of national laws which no national or international authority had hitherto been able to proclaim, let alone enforce."

6. The Representative of France also requested that attention be directed to the suggestions he submitted for articles of the International Declaration of Human Rights during the first session of the Drafting Committee. These suggestions are contained in Annex D of the Report of the Drafting Committee to the Commission on Human Rights (document E/CN.4/21, pages 48-68).

7. The Representative of Lebanon proposed the addition of the following Article at the end of the Declaration:

"In construing the Articles of this Declaration, the several articles shall be regarded in their relation to each other."

The proposal was lost by seven votes for to seven against. The Representative of Lebanon wishes this article to be further considered in the future.

8. The Representative of Panama made the following comments:

"1. The draft has been made under the definite assumption that the Declaration implies no obligation whatever, and as a consequence, the drafting of the instrument is neither clear nor precise.

"2. The present draft, although it should have taken into special consideration, according to a unanimous vote by the Group that worked on the Declaration, the text submitted by the delegation of Panama since the San Francisco Conference, (see document E/CN.4/53, page 3), actually has ignored the text proposed by Panama.

"3. The present draft carries as articles what in the text proposed by Panama goes into the comments. The present draft includes some controversial wording of rights which will not be acceptable to several Goverments.

"4. In the course of the discussion it has been evident that the only basis of discussion can be the text originally proposed by Panama, not only because of the various provisions already taken in its

/behalf,

behalf, but particularly because it contains a minimum of rights acceptable to all, drafted in a series of eighteen short articles, worded with juridical correctness and precision.

"5. The delegation of Panama points out that in the San Francisco Conference three Latin-American Republics - Panama, Cuba and Mexico - proposed the drafting of an international Bill of Rights made up of two Declarations: one on the fundamental rights of man and the other on the duties and rights of the States. The guarantees of the individual cannot be satisfactorily declared unless the duties and rights of the State, of which he is a citizen, are also recognized."

9. The Representative of the Union of Soviet Socialist Republics felt that the draft "Declaration on Human Rights", as prepared by the Commission is not sufficient for the protection of the essential human rights. Consequently, he reserved his right to present, at a later stage of the work, a Soviet draft "Declaration on Human Rights".

10. The Representative of the United States requested that the following articles, suggested by her at the commencement of the second session, be included as a comment. The articles might be considered by Member Governments which would prefer a shorter and less technical Declaration:

Article 1

Everyone is entitled to life, liberty, and equal protection under law.

Article 2

Everyone has the right to freedom of information, speech, and expression; to freedom of religion, conscience, and belief; to freedom of assembly and of association; and to freedom to petition his Government and the United Nations.

Article 3

No one shall be subjected to unreasonable interference with his privacy, family, home, correspondence or reputation. No one shall be arbitrarily deprived of his property.

Article 4

There shall be liberty to move freely from place to place within the State, to emigrate, and to seek asylum from persecution.

Article 5

No one shall be held in slavery or involuntary servitude. No one shall be subjected to torture or to cruel or inhuman punishment or indignity.

Article 6

No one shall be subjected to arbitrary arrest or detention. Anyone who is arrested has the right to be promptly informed of the

/charges

charges against him, and to trial within a reasonable time or to be released.

Article 7

Every one, in the determination of his rights and obligations, is entitled to a fair hearing before an independent and impartial tribunal and to the aid of Counsel. No one shall be convicted or punished for crime except after public trial pursuant to law in effect at the time of the commission of the act charged. Everyone, regardless of office or status, is subject to the rule of law.

Article 8

Every one has the right to a nationality. Everyone has a right to take an effective part in his government directly or through his representatives; and to participate in elections, which shall be periodic, free and by secret ballot.

Article 9

Every one has the right to a decent living; to work and advance his well-being; to health, education and social security. There shall be equal opportunity for all to participate in the economic and cultural life of the community.

Article 10

Every one, everywhere in the world, is entitled to the human rights and fundamental freedoms set forth in this Declaration without distinction as to race, sex, language or religion. The full exercise of these rights requires recognition of the rights of others and protection by law of the freedom, general welfare and security of all.

11. The Working Group on the Declaration suggested the following Article, which the Commission omitted from its draft with a view to inclusion of its substance either in the preamble or in a final Article:

"When a government, group or individual seriously or systematically tramples the fundamental human rights and freedoms, individuals and peoples have the right to resist oppression and tyranny."

Comments on Specific Articles of the Draft Declaration.

Article 2

1. The Representative of China suggested the following wording:

"In the exercise of these rights every one shall respect the rights of others and comply with the just requirements of the democratic State."

2. The Representative of the United Kingdom expressed the view that the State should not be regarded as limiting the rights of individuals but as promoting the rights of all. He proposed the following alternative text, which he requested should be placed on record:

"In the exercise of his rights everyone must recognize the rights of others and his obligation to society so that all may develop their spirit, mind and body in wider freedom."

/3. The

3. The Representative of the United States preferred the following text, which she had suggested:

"The full exercise of these rights requires recognition of the rights of others and protection by the law of the freedom, general welfare and security of all."

4. The Representative of Uruguay proposed that the provision adopted be replaced by another, more in harmony with the final provisions of the Declaration and the Convention he had himself proposed, which provide for the deprivation and limitation of rights, specifying the juridical acts required for this purpose, which, in principle, must be the law, and the reasons on which these acts must be based: public order and the security of the Sate; normal development of social life; harmonious exercise of all rights.

Article 10

The Representative of the Philippines requested that the following comment on Article 10 appear in the Report:

"It was recognized that the right of emigration, affirmed above, would not be effective without facilities for immigration into and transit through other countries. It is recommended that these corollaries be treated as a matter of international concern and that members of the United Nations co-operate in providing such facilities."

Article 13

1. The Representative of Lebanon made a motion to amend Article 13 by substituting for the second sentence of the text the two sentences following:

"The family deriving from marriage is the natural and fundamental group unit of society. It is endowed by the Creator with inalienable rights antecedent to all positive law and as such shall be protected by the State and society."

Only the first of these substitute sentences was adopted; consequently the Representative of Lebanon desires that the second sentence be further considered in the future.

2. The Representative of the United Kingdom suggested the following additional wording for Article 13:

"Married persons shall have the right to reside together in any country from which they cannot be lawfully excluded."

3. The Representative of Uruguay stated, with reference to the motion of the Representative of Lebanon, that his country would not accept any national or international document, whether legal or political, embodying assertions of a religious nature, on account of his country's Constitution which provided for the separation of Church and State, though at the same time it ensured freedom of worship and instruction.

/Article 19

Article 19

1. It is understood that no individual or association that aims to destroy the fundamental rights and freedoms set forth in this Declaration can claim protection under this Article. The Article is not intended to include international political associations forbidden by law.

2. The Representative of Uruguay, in accordance with the position of his country on liberty of thought and all its logical consequences and with the formula submitted to replace the article of the Covenant dealing with the right of assembly disapproves any restriction on the right of assembly.

Article 21

Following the suggestion of the Representative of the United Kingdom, it was agreed that in non-metropolitan territories the use of such balloting procedure as the secret ballot could not be imposed when its effect might be contrary to the intentions of Article 74 (c) of the Charter, or to the obligations contained in the relevant parts of the Trusteeship agreements.

Article 23

Article 24

A. The Representative of the United Kingdom expressed the view that the first line of Article 24 should read; "Everyone has the right to work or to maintenance," and that Article 24 should be placed immediately after the end of Article 27. In this way the responsibility of society for providing adequate measures of social security would be placed in its proper relationship with the right of the individual to work.

Cf. Doc. E/600 Corr. 1.

[B. The representative of the United States questions the desirability of setting forth positive duties of the State in this Article, since it tends to throw the rest of the Declaration (the Articles of which with a few exceptions do not set forth such positive duties) out of balance.]

C. The Representative of the Byelorussian Soviet Socialist Republic suggested the following addition to this Article:

"The State is obliged to take all necessary measures against unemployment.

Article 25

The Representative of Uruguay calls attention to the necessity to insert in the first paragraph of this article; "Every one has the duty to preserve his health." Although his proposal was rejected, he urges that this duty justifies the intervention of the State in matters of health.

Article 26

See comment of the Representative of the United States (B above) on Article 24.

Article 27

1. The Representative of the Philippines suggested the following additional text for this Article:

/"The right

"The right of private education will be respected and in such places or countries as desire it, religious education shall be permitted in the schools."

2. The Representative of Uruguay voiced the opinion that, in accordance with the provisions of the Uruguayan Constitution, free State-provided elementary, secondary, higher vocational, artistic and physical education should be declared to be nationally and internationally beneficial.

ANNEX B

PART I

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS

PART I

Article 1

The States parties hereto declare that they recognize the principles set forth in Part II hereof as being among the human rights and fundamental freedoms founded on the general principles of law recognized by civilized nations.

Article 2

Every State, party hereto, undertakes to ensure:

(a) that its laws secure to all persons under its jurisdiction, whether citizens, persons of foreign nationality or stateless persons, the enjoyment of these human rights and fundamental freedoms;

(b) that such laws, respecting these human rights and fundamental freedoms, conform with the general principles of law recognized by civilized nations;

(c) that any person whose rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(d) that such remedies shall be enforceable by a judiciary whose independence is secured; and

(e) that its police and executive officers shall act in support of the enjoyment of these rights and freedoms.

Article 3

On receipt of a request to this effect from the Secretary-General of the United Nations made under the authority of a resolution of the General Assembly, the Government of any party to this Covenant shall supply an explanation as to the manner in which the law of that State gives effect to any of the provisions of this Covenant.

Article 4

1. In time of war or other public emergency, a State may take measures derogating from its obligations under Article 2 above to the extent strictly limited by the exigencies of the situation.

/2. Any State

2. Any State party hereto availing itself of this right of derogation shall inform the Secretary-General of the United Nations fully of the measures which it has thus enacted and the reasons therefor. It shall also inform him as and when the measures cease to operate and the provisions of Article 2 are being fully executed.

PART II

Article 5

It shall be unlawful to deprive any person of his life save in the execution of the sentence of a court following his conviction of a crime for which this penalty is provided by law.

Article 6

It shall be unlawful to subject any person to any form of physical mutilation or medical or scientific experimentation against his will.

Article 7

No person shall be subjected to torture or to cruel or inhuman punishment or to cruel or inhuman indignity.

Article 8

1. No person shall be held in slavery or servitude.

2. No person shall be required to perform forced or compulsory labour in any form other than labour exacted as a punishment for crime of which the person concerned has been convicted by due process of law.

3. For the purposes of this Article, the term "forced or compulsory labour" shall not include:

(a) any service of a purely military character, or service of a non-military character in the case of conscientious objectors, exacted in virtue of compulsory military service laws;

(b) any service exacted in cases of emergency created by fire, flood, famine, earthquake, violent epidemic or epizootic disease, invasion by animals, insect or vegetable pests, or similar calamities or other emergencies threatening the life or well-being of the community;

(c) any minor communal services considered as normal civic obligations incumbent upon the members of the community, provided that these obligations have been accepted by the members of the community concerned directly or through their directly elected representatives.

Article 9

1. No person shall be subjected to arbitrary arrest or detention.

2. No person shall be deprived of his liberty save in the case of:

(a) the arrest of a person effected for the purpose of bringing him before a court on a reasonable suspicion of having committed a crime or which is reasonably considered to be immediately necessary to prevent his committing a crime;

(b) the lawful arrest and detention of a person for non-compliance with the lawful order or decree of a court;

(c) the lawful detention of a person sentenced after conviction to deprivation of liberty;

(d) the lawful detention of persons of unsound mind;

(e) the parental or quasi-parental custody of minors;

(f) the lawful arrest and detention of a person to prevent his effecting an unauthorized entry into the country;

(g) the lawful arrest and detention of aliens against whom deportation proceedings are pending.

3. Any person who is arrested shall be informed promptly of the charges against him. Any person who is arrested under the provisions of sub-paragraphs (a) or (b) of paragraph 2 of this Article shall be brought promptly before a judge, and shall be tried within a reasonable time or released.

4. Every person who is deprived of his liberty shall have an effective remedy in the nature of "habeas corpus" by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Every person shall have an enforceable right to compensation in respect of any unlawful arrest or deprivation of liberty.

Article 10

No person shall be imprisoned or held in servitude in consequence of the mere breach of a contractual obligation.

Article 11

1. Subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security or in the general interest, there shall be liberty of movement and free choice of residence within the borders of each state.

2. Any person who is not subject to any lawful deprivation of liberty or to any outstanding obligations with regard to national service shall be free to leave any country including his own.

Article 12

No alien legally admitted to the territory of a State shall be arbitrarily expelled therefrom.

/Article 13

Article 13

1. In the determination of any criminal charge against him or of any of his civil rights or obligations, every person is entitled to a fair hearing before an independent and impartial tribunal and to the aid of a qualified representative of his own choice.

2. No person shall be convicted or punished for crime except after public trial.

Article 14

1. No person shall be held guilty of any offence on account of any act or omission which did not constitute such an offence at the time when it was committed, nor shall he be liable to any greater punishment than that prescribed for such offence by the law in force at the time when the offence was committed.

2. Nothing in this Article shall prejudice the trial and punishment of any person for the commission of any act which, at the time it was committed, was criminal according to the general principles of law recognized by civilized nations.

Article 15

No person shall be deprived of his juridical personality.

Article 16

1. Every person shall have the right to freedom of religion, conscience and belief, including the right, either alone or in community with other persons of like mind, to hold and manifest any religious or other belief, to change his belief, and to practice any form of religious worship and observance, and he shall not be required to do any act which is contrary to such worship and observance.

2. Every person of full age and sound mind shall be free, either alone or in a community with other persons of like mind, to give and receive any form of religious teaching, and in the case of a minor the parent or guardian shall be free to determine what religious teaching he shall receive.

3. The above rights and freedoms shall be subject only to such limitations as are prescribed by law and are necessary to protect public order and welfare, morals and the rights and freedoms of others.

(Article 17)

(The Commission decided not to elaborate a final text on this Article until it had before it the views of the Sub-Commission on the Freedom of Information and of the Press and of the International Conferen on Freedom of Information. The texts reproduced below have been proposed by the Drafting Committee and by the Representative of the United States respectively.)

/(Text proposed

(Text proposed by the Drafting Committee:)

(1. Every person shall be free to express and publish his ideas orally, in writing, in the form of art or otherwise.)

(2. Every person shall be free to receive and disseminate information of all kinds, including facts, critical comment and ideas, by the medium of books, newspapers, oral instructions or any other lawfully operated device.)

(3. The freedoms of speech and information referred to in the preceding paragraphs of this Article may be subject only to necessary restrictions, penalties or liabilities with regard to: matters which must remain secret in the interests of national safety; publications intended or likely to incite persons to alter by violence the system of Government, or to promote disorder or crime; obscene publications; (publications aimed at the suppression of human rights and fundamental freedoms); publications injurious to the independence of the judiciary or the fair conduct of legal proceedings; and expressions or publications which libel or slander the reputations of other persons.)

(Text proposed by the Representative of the United States:)

(Every one shall have the right to freedom of information, speech and expression. Every one shall be free to hold his opinion without molestation, to receive and seek information and the opinion of others from sources wherever situated, and to disseminate opinions and information, either by word, in writing, in the press, in books or by visual, auditive or other means.)

Article 18

All persons shall have the right to assemble peaceably for any lawful purpose including the discussion of any matter on which under Article 17 any person has the right to express and publish his ideas. No restrictions shall be placed on the exercise of this right other than those necessary for:

(a) the protection of life or property;

(b) the prevention of disorders; or

(c) the prevention of the obstruction of traffic or the free movement of others.

Article 19

All persons shall be free to constitute associations, in whatever form may be appropriate under the law of the State, for the promotion and protectio of their legitimate interests and of any other lawful object, including the dissemination of all information of which under Article 17 the dissemination is unrestricted. The rights and freedoms set forth in Articles 16 and 17 shall be enjoyed by such associations.

/Article 20

Article 20

Every person shall be entitled to the rights and freedoms set forth in this Covenant, without distinction as to race, (which includes colour), sex, language, religion, political or other opinion, property status, or national or social origin. Every person, regardless of office or status, shall be entitled to equal protection under the law against any arbitrary discrimination or against any incitement to such discrimination in violation of this Covenant.

Article 21

Any advocacy of national, racial or religious hostility that constitutes an incitement to violence shall be prohibited by the law of the State.

Article 22

Nothing in this Covenant shall be considered to give any person or State the right to engage in any activity aimed at the destruction of any of the rights and freedoms prescribed herein.

PART III

Article 23

1. This Covenant shall be open for accession to every State Member of the United Nations or party to the Statute of the International Court of Justice and to every other State which the General Assembly of the United Nations shall, by resolution, declare to be eligible.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations, and as soon as two-thirds of the States Members of the United Nations have deposited such instruments the Covenant shall come into force between them. As regards any State which accedes thereafter, the Covenant shall come into force on the date of the deposit of its instrument of accession.

3. The Secretary-General of the United Nations shall inform all members of the United Nations and the other States referred to in paragraph 1 above of the deposit of each instrument of accession.

Article 24

In the case of a Federal State, the following provisions shall apply:

(a) With respect to any Articles of this Covenant which the federal government regards as wholly or in part appropriate for federal action, the obligations of the federal governments shall, to this extent, be the same as those of parties which are not federal states;

(b) In respect of Articles which the federal government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent States, Provinces or Cantons, the federal government shall bring such provisions, with a favourable recommendation,

/to the notice

ANNEX B

PART II

COMMENTS ON THE DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS

General Comments on the Draft Covenant

1. The Representative of Egypt, while voting for the draft Covenant stressed the fact that it was only a first draft intended for submission to Governments; experts would have to go over it carefully and put it into correct final form.

2. The Representative of France, in voting to submit the draft Covenant to governments, stated that in his opinion a short general declaration should be elaborated first, to be followed by a series of more detailed conventions. He felt that on many questions dealt with in the draft Bill of Rights, the help of experts, and of the Specialized Agencies, would be required.

3. The Representative of France presented the following text which he later withdrew, accepting the ruling that it would be discussed in connection with th preamble of the Covenant:

> "The States parties hereto,
>
> "Determined to effectively apply the general principles recognized in the international Declaration on Human Rights and fundamental freedoms, adopted by the General Assembly of the United Nations on .....,
>
> "Have agreed to conclude a First Covenant defining the practical scope of some of those principles and establishing general measures and guarantees for the effective respect of Human Rights and fundamental freedoms."

4. The Representative of the United States submitted the following comment for the Report, and the Representatives of China and Uruguay associated themselves with it:

> "The United States believes that the Drafting Committee should seriously consider whether it is better to have one overall limitation clause than to try to spell out every possible limitation in each article."

5. The Representative of the United Kingdom considered that the general limitation clause proposed by the United States would be open to abuse by signatory States, and that the production of a Covenant rendered innocuous by such a clause would bring the Covenant and the United Nations into discredit. In the view of the Representative of the United Kingdom, the only way to achiev progress is by a fairly tightly drawn Covenant which will prescribe, as precisely as possible, the limitations permissible in respect of each separate right and freedom. While appreciating that a Covenant in so precise

/a form

a form will not be easy to achieve, he believed that it was well within the bounds of possibility and abundantly worth the effort to achieve it. He suggested that it might well be that only a limited number of Members of the United Nations would subscribe immediately to such a Covenant as the United Kingdom proposed, and that it might not come into force for some time; but when it did come into force it would register great progress. Moreover, once such a Covenant was in existence, there would be certain pressure on members who had not acceded to it to begin with, to accede to it and conform with its terms.

6. The Representative of the Union of Soviet Socialist Republics felt that the drafting of a Covenant was premature before the preparations of the text of the Declaration on Human Rights had been completed and before the opinion of the Governments on this Declaration had been received and considered. For these reasons, he voted against taking any decision on the draft Covenant.

7. The Representative of Uruguay wished to affirm here his comments recorded at greater length in Annex C: that in his opinion all national laws should be brought into conformity with the Covenant, that the Covenant should supercede any part of international law in contradiction with its terms, and that it should be impossible to modify or to abolish the Covenant except by another international Covenant or Convention.

8. The Representative of the American Federation of Labor suggested that the general limitation clause be the same in the Covenant and in the Declaration, and suggested that the following clause be for that purpose:

> "The full exercise of these rights requires recognition of the rights of others and protection by law of the freedom, general welfare, and security of all."

Comments on Specific Articles of the Draft Covenant

Article 4

1. The working group on the Covenant felt that articles concerning violations and communications, still to be elaborated, ought to appear in Part I, immediatel after Article 4.

2. The Representative of Uruguay suggested the following article on the right to life:

> "Every person has the right to life. It is the duty of the State to protect persons born or conceived, incurables, and persons physically or mentally incapable. The State is obliged to ensure minimum conditions enabling all persons to live a dignified and worthy life. The death penalty shall never be applied to political or ordinary offenders merely by decrees issued in virtue of laws previously in force, but only after trial in which all the guarantees necessary for reaching a just verdict

--Article 1 of the Draft of the Inter-American Juridical Committee; Article 1 of the draft of Professor J. A. Ramirez of Uruguay.

/The Representative

The Representative of Uruguay felt that the death penalty could not be justified by any philosophic or sociological argument or on any grounds of criminal or ethical policy.

Article 5

The Representative of India stated that she was of the view that the second paragraph of the corresponding article proposed by the Working Group (document E/CN.4/56, page 6, Article 4) should be omitted on the ground that it was not of general application and because in her opinion every State should be left free to legislate according to its own needs and the convictions of its people.

Article 8

The Representative of Lebanon moved the addition of the following phrase to Article 8, paragraph 3, part (a) of the Draft Covenant: "provided that the civilian service of conscientious objectors be compensated with adequate maintenance and pay." The proposal signifies by "maintenance" food, clothing and shelter; by "pay" the same pay as is received by the soldier of the lowest rank. This motion was defeated by a vote of 6 to 4 with 7 abstentions. The Representative of Lebanon wishes this amendment to be considered further in the future.

Article 9

1. The Representative of India felt that it would be desirable to add the words "and to prevent evasion of the legal process" to paragraph 2 (b), in view of the procedure obtaining in most countries. She also felt that in paragraph 3, words should be added to except from the provision of the first sentence of the Article offences that do not always require legal proceedings, e.g., orders in regard to aliens.

2. The Representative of the United States also was not sure that the text adopted covers adequately all cases of civil arrest. She felt that paragraph 2 might not clearly give adequate safeguards to insane persons, aliens, and possibly others.

3. The Representative of the United States also wished it to be noted that in connection with paragraph 5 of the Article, it was the feeling of the Working Group, which drafted the Article, that the requirements of the paragraph could be satisfied by the bona fide provision of private remedies as well as by remedies for compensation by the State.

4. The Representative of Uruguay felt that the text should be drafted in a less detailed form. He agreed with the point of view expressed in paragraph 5.

Article 13

The Representative of Uruguay feels certain that the Commission adopted the word "misdemeanor" to replace the word "crime" in paragraph 2, upon his motion.

/Article 15

Article 15

The Representative of Uruguay felt that in connection with the phrase "No person shall be deprived", a distinction should be drawn between the position of individuals and that of organizations which have obtained juridical personality. He urged that the text read: "No human being...."

Article 17

The Representative of Uruguay suggested the following article for consideration:

"There shall be entire freedom to communicate thoughts expressed by means of the press, postal services, wireless, telegraphy, telephone, motion pictures and any other instruments of propaganda. Censorship is forbidden. For the suppression of abuses all preventive means, direct or indirect, are excluded. The action of the State shall be confined to the imposition of penalties. There shall be full freedom of access to means of information and dissemination of opinions, subject to the right of States and private individuals to rectification and reply. The right of free expression of thought may be limited at times of civil or international war, but only in respect of information on military operations."

He felt that Uruguay could not accept the preventive prohibition of certain forms of propaganda, the creation of offences of opinion, the imposition of a certain intellectual legitimism preventing the free exercise of criticism within a political democracy. Offences may be established but not to punish opinions, except in cases where ideas expressed in public may give rise to seriously dangerous acts. In such cases, too, intervention by the State can only be justified after the propaganda has been published.

Article 23

The Representative of the United States offered the following suggested text for this Article:

"It being in the interest of humanity that the rights and obligations enunciated herein shall be as widespread as possible, this Covenant shall be open for accession by all States, whether or not members of the United Nations."

ANNEX C

PART I

Report of the Working Group on Implementation

1. At its thirtieth meeting, the Commission on Human Rights established three working groups to undertake respectively the drawing up of a draft Declaration, the preparation of one or more draft conventions or covenants, and the study of the question of implementation.

2. The working group on implementation was composed of the Representatives of Australia, Belgium, India, Iran, the Ukrainian Soviet Socialist Republic, and Uruguay. The Representative of Uruguay, being unavoidably delayed in reaching the session, did not participate in any meeting of the working group. The United Kingdom, the Union of Soviet Socialist Republics, the United States and the International Labour Organization were represented at diverse meetings by an observer. Observers from two non-governmental organizations, the Consultative Council of Jewish Organizations and the World Jewish Congress, also participated.

3. Mrs. Hansa MEHTA (India) was elected Chairman of the working group, and Mr. Fernand DEHOUSSE (Belgium), Rapporteur. Mr. Edward LAWSON acted as Secretary.

The View of the Group as to its Mandate

4. The Working Group decided to base its discussions on document E/CN.4/21, Annex H, pages 68 to 74.

5. A letter from Mr. René Cassin, Representative of France, addressed to the CHAIRMAN, also came up for discussion and was published as United Nations document E/CN.4/AC.4/1.

6. The Group had no difficulty in agreeing that in view of the limited time at its disposal it would be impossible for it to submit to the Plenary Commission texts of articles for incorporation in the Draft Convention or Conventions. It regarded its task therefore as consisting in the formulation of general principles concerning the problem entrusted to it. In its view it would rest with the Drafting Committee at its next session to put these principles into the proper form.

7. Various Representatives pointed out on the other hand that the Secretariat's Memorandum contained in the above-mentioned Annex H had really been drawn up with a view to the preparation of a Declaration. The Group considered that its Mandate undoubtedly extended to study of the implementation of one or more possible Conventions. It even arrived at the conclusion that the question of implementation had much more to do with the Convention than with the Declaration. The latter indeed was in the last analysis to take the form of a recommendation by the General Assembly of the

/United Nations,

United Nations, and was consequently not legally binding in the strict sense of the term. It therefore appeared to the Working Group a manifest impossibility to contemplate measures for the fulfillment of an obligation that was not one.

8. In connection with the Declaration, the Group therefore confined itself to answering the four questions of a general legal character embodied in paragraph 3 of the Secretariat's Memorandum.

9. The Group also applied by analogy the questions raised by the Memorandum concerning the implementation of the Declaration to the implementation of the Convention.

Objection Raised by the Representative of the Ukrainian Soviet Socialist Republic

10. The Representative of the Ukrainian Soviet Socialist Republic doubted whether the Group was really in a position to embark on its studies before the final contents of the Declaration and, in particular, the Convention had been decided upon. In his opinion, the question of implementation demanded previous knowledge of the rules to be implemented.

11. The reply given to this, in particular by the Representative of Belgium, was that the question of implementation might indeed depend on the existence in the Declaration or in the Convention of certain special stipulations, but that the overall question could be considered at once in its own right, since it concerned the creation, description and working of institutions and machinery to be studied at their own level.

12. The Group was also of the opinion that, had it been accepted, the view expressed by the Representative of the Ukrainian Soviet Socialist Republic would have made it impossible for the Working Group to carry out the task entrusted to it by the Commission.

13. The Representative of the Ukrainian Soviet Socialist Republic was not, however, to be shaken in his opinion.

14. At the meeting on Saturday, 6 December (morning) he sent the Chairman a written memorandum reading as follows:

> "I have got a strong opinion during these discussions that it is impossible for me to take my part in them because I am standing on my old position that it is necessary to discuss the question of an implementation on a more late stage of the Human Rights Commission's work, when the work of another Working Party will be finished.
>
> "Standing on this position I decided to be out from this discussion and ask you to put down my opinion and decision in the Report of the Third Working Party to the Human Rights Commission.
>
> "I hope, dear Chairman, you will not take my opposition as opposition against your ruling."

/Following

Following this communication the Representative of the Ukrainian Soviet Socialist Republic left the meeting and took no further part in the work of the Group.

The Representative of Belgium and the Representative of Australia stated that they deplored this attitude and asked for their regret to be recorded in the Group's Report. The Representative of Australia explained that the decision of the Ukrainian Representative had been taken despite his having been assured on various occasions that the Third Working Group would confine itself to outlining general principles. The Representative of Australia also expressed a desire to have this latter statement of his recorded in the Report.

Replies to the First Four Questions Contained in Paragraph 3 of the Secretariat's Memorandum

The Group regarded paragraphs 1 and 2 of the Secretariat's Memorandum as of purely historical and documentary interest. It accordingly began its examination of the Memorandum at paragraph 3.

That paragraph contains four questions all referring to the Bill (Declaration). The Group gave their answers to them with reference to both the Declaration and the Convention.

Question A

Whether or not the Bill (or the Convention) should contain a provision to the effect that it cannot be unilaterally abrogated or modified?

The Group was unanimous that there should be no such provision.

It considered that the insertion of a clause of that kind might decrease the authority of the Declaration or Convention.

In the case of the Declaration, moreover, it would exceed the General Assembly's competence, as the Declaration was intended ultimately to constitute a recommendation.

In the case of the Convention, the fact should be stressed that it was an international obligation, the violation of which was obviously forbidden by international law.

Question B

Whether or not the Bill (or the Convention) should include an express statement to the effect that the matters dealt with in it are of international concern?

The Group studied the bearing of Article 2, paragraph 7, of the Charter of the United Nations on the future Declaration or Convention.

The proposed clause seemed to it unnecessary. The "domestic jurisdiction" of States, to which the above-mentioned article referred, if rightly interpreted, only covered questions which had not become international in one way or another. Once States agreed that such questions should form the subject of a Declaration or Convention, they clearly placed them outside

/their

their "domestic jurisdiction" and Article 2, paragraph 7 became inapplicable.*

Question C

Whether or not the Bill (or the Convention) should become part of the fundamental law of States accepting it?

After some discussion at the end of its first and at the beginning of its second meeting, the Group accepted a proposal by the Australian Representative, couched in the following terms (document E/CN.4/AC.4/SR.2):

> "The Working Group is of the opinion that the provisions of the Bill or Convention must be a part of the fundamental law of States ratifying it. States, therefore, must take action to ensure that their national laws cover the contents of the Bill, so that no executive or legislative organs or government can over-ride them, and that the judicial organs alone shall be the means whereby the rights of the citizens of the States set out in the Bill are protected."

15. It will be noted: (1) that implementation was envisaged in this text in respect of the Convention alone; (2) that the Australian proposal constituted a reply both to the question examined here and to that given under 3 (d) of the Memorandum (see below); (3) that it was expressly stated that it was in the fundamental law of States that the Convention was to be incorporated.

16. The Group adhered to its view that it should confine its study to the Convention. It considered that the problem of implementation did not arise with regard to the Declaration under Question C. The same opinion with regard to the Declaration was also expressed in relation to Question D. In both cases, it was the non-binding nature of the Declaration - a recommendation - which led the Group to this conclusion.

17. After discussing paragraph 3 (c) of the Secretariat's Memorandum, the Group therefore ruled out completely any further consideration of the question of implementing the Declaration.

18. Subsequent discussion made it clear not only that Question C should be studied in conjunction with Question D as indicated in the Australian proposal, but that Questions C and D raised various delicate points concerning the relationship between international law and municipal law within the legal systems of States.

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* The Representative of the United States was of the opinion that removal of the subject matter from "domestic jurisdiction" should be limited to States parties to the Convention. She concurred in the conclusion reached, that no express statement to the effect that the matters dealt with are of international concern should be included in the convention, but not in the reasoning which follows that statement in the Report on this point.

/19. On the

19. On the suggestion of the Belgian Representative, the Group then decided to hear the views of someone who was particularly well versed in these problems, namely, Mr. C.W. Jenks, Legal Adviser to the International Labour Office. The problems connected with the application of International Labour Conventions bear a very close analogy to those raised by the application of a Convention on Human Rights, in that, in both cases, the main effect of the Convention is produced inside each State, and not only in the field of relations between States. As the International Labour Office has more than a quarter of a century's experience in this sphere, it was felt that one of its Representatives should certainly be heard.

20. The Working Group heard the statement by Mr. Jenks at its meeting on Monday 8 December (morning).

21. Previous to this, it decided to hold in abeyance its final acceptance of the Australian proposal.

22. An indication will be found, under the heading "Question D" below, of the solutions finally adopted by the Working Group in regard to Questions C and D taken in conjunction.

Question D

Whether or not the provisions of the Bill (here read: CONVENTION only) should be declared to be directly applicable in the various countries without further implementation by national legislation or transformation into national law.

23. The Working Group decided to recommend to the Commission on Human Rights, four conclusions which it has extracted and retained from Mr. Jenks' statement.

24. The Working Group believes, firstly, that if an answer is to be provided to Questions C and D, reference will first have to be made to the constitutional law of each State signing the Convention. If the constitutional law of any State concerned permits the immediate application within the legal system of the State of treaties ratified, the Working Group considers that this solution should certainly be adopted, since it is so simple and practical from the point of view of implementation.

25. However, the Group believes - and this is its second observation, that attention must be drawn to the fact that, even in the case mentioned in the foregoing paragraph, special or additional implementation measures may be necessary. Treaties frequently contain provisions calling for action by the legislative or executive organs in the domestic field. These would therefore not be sufficient in themselves and it is obvious that their mere incorporation in the national legislation of the ratifying State does not relieve the latter of the duty to provide for any implementation required. This will apply to the Convention on Human Rights in the same way as to treaties in general, according

/to the

to the provisions inserted in the Convention.

26. Regardless of the implementation measures required by the ratification of the Convention or by its contents, the Working Group recommends, thirdly, that wherever this is not precluded by the constitutional law of the ratifying State the foregoing measures should preferably be taken prior to ratification.* It is convinced that this procedure is the surest means of forestalling any political or legal difficulties which may arise from a discrepancy between the commitments and responsibilities assumed by a State in the international field, and the necessity, in which it may find itself, to obtain from its parliament a vote approving the essential implementation procedures.

27. Finally, the Working Group desires to point out that, where ratification nevertheless occurs before implementation has been assured, there should be a clear understanding that implementation would ensue within the shortest possible time.

28. After adopting the four recommendations described above, the Group re-examined the Australian proposal, already referred to. It finally concluded that this proposal was compatible with the above-mentioned recommendations. It thereupon gave final approval to the proposal. It altered the first sentence of the text, however, replacing the words "fundamental laws" by the word "laws". This decision was taken to satisfy those representatives who had remarked on the difficulties, possibly insuperable, in the way of their countries' undertaking a revision of their Constitutions by reason of their ratifying the Convention on Human Rights.

29. The Group therefore submits two categories of suggestions to the Commission: firstly, the amended Australian proposal, secondly, four recommendations, not yet drafted, embodying principles.

30. In regard to the third and fourth recommendations, the United Kingdom Observer raised the question of the relations between his country and some of its colonies in respect of treaties. He stated that in many cases the United Kingdom was pledged to consult the colonies by procedures which differed widely, and which might delay or prevent the application of treaties to a given colony. He pointed out that in his opinion the appropriate moment for this consultation would occur between signature and ratification of the Convention and he expressed the desire to have his statement recorded in this Report as a personal observation.

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* The Representative of the United States was of the opinion that full implementation cannot be required of all States prior to ratification.

International Machinery for the Effective Supervision and Enforcement of the Convention on Human Rights

31. At this second stage of its work, the Working Group took as a basis for its discussions: (1) the questions mentioned on pages 68 and 69 of the Secretariat's Memorandum, under the letters A, B, C and D; and (2) the Australian draft resolution for the establishment of an International Court of Human Rights.

32. This draft resolution, presented in document E/CN.4/15, is also reproduced in the Secretariat's memorandum, paragraph 4. Paragraphs 5 and 6 deal with the further development of this question. Paragraphs 7-14 refer to various proposals and suggestions, inter alia, a draft resolution submitte by the representative for India included in document E/CN.4/11 as well.

33. In view of the very special importance attaching to the creation of an International Court of Human Rights, this problem will be dealt with separately in the third and last part of this Report. The establishment of the Court - this term was generally used by the Working Group in preference to "Tribunal" - moreover raises very different points from those examined in the five questions mentioned above (a), (b), (c), (d) and (e), which alone would justify the classification adopted here.

Question (a) suggested:

> the establishment of the right of the General Assembly and other organs of the United Nations, including possibly the Commission on Human Rights to discuss and make recommendations in regard to violations of the Convention;

34. The replies furnished by the Group to this question may be summed up under four heads:

(1) In the first place the Group wished the report to contain a reference to the right of discussion and, except as provided in Article 12, the right to make recommendations vested in the General Assembly under Article 10 of the Charter. As is commonly known, these two prerogatives apply to any questions or any matters within the scope of the Charter, or relating to the powers and functions of any organs provided for therein. Clearly then, they include human rights, mentioned at seven different points in the Charter, and in respect of which one of the principal organs of the United Nations, the Economic and Social Council, has been invested by the Charter with special powers.

The group accordingly laid special stress on the right of the General Assembly to make recommendations to the Members of the United Nations.

(2) The Group voiced a similar desire in regard to the whole of the prerogatives granted to the Economic and Social Council in various parts of the Charter, particularly in Article 62.

/Under this

Under this Article the Economic and Social Council may, in respect of human rights as of all other matters falling within its competence, (a) make or initiate studies and reports (paragraph 1); and (b) make recommendations (paragraphs 1 and 2 combined); (c) prepare draft Conventions for submission to the General Assembly (paragraph 3); and (d) call, in accordance with the rules prescribed by the United Nations, international conferences (paragraph

The Group noted with keen interest that the right to make recommendation granted to the Council under paragraphs 1 and 2 combined is mentioned specifically in paragraph 2 with reference to "respect for, and observance of human rights and fundamental freedoms for all". In the view of the Group thi reference can only be construed as a recognition, in the Charter, of the vita importance of human rights.

The Group also noted that under paragraph 1 of the same Article the Economic and Social Council has the right to make recommendations (in general to the General Assembly, the Members of the United Nations and the specialize agencies concerned. Like the General Assembly, the Council is therefore entitled to approach the Members directly.

(3) The Group was unanimously of the opinion that the Economic and Social Council, whilst still retaining the whole of its prerogatives, and therefore its right to make recommendations with respect to human rights, should also delegate this latter right to the Commission on Human Rights. It therefore proposes that the Commission should, during its present session, request the formal delegation of this right in the Report which it is to submit to the Council.

The Group made a very thorough study of the question of the delegation of powers, and stressed throughout that in its view such delegation should not have the effect of investing the Commission on Human Rights with an exclusive authority not provided for in the Charter; the Commission on Human Rights should have joint authority with the Council. The Working Group believes that the delegation of powers requested might be granted without implying the amendment and, a fortiori, the revision of the Charter. The Commission on Human Rights is in fact one of the organs of the Economic and Social Council and there appears to be no juridical objection to such a delegation of powers, particularly, it must be repeated, since it would not be exclusive in character.

There are, on the other hand, weighty practical arguments in its favour. The Economic and Social Council is known to be overburdened with functions; so overburdened, indeed, that it cannot always carry out with the desirable efficiency the many and varied tasks imposed on it. In contrast the Commissi on Human Rights is a specialized organ with clear-cut purposes. Hence it would appear to be better qualified than the Council to deal with human right

/and, in

and, in particular, to discharge the function, always a delicate one, of elaborating recommendations. The Working Group feels it should add that the members of the Commission are chosen precisely for their personal qualificatior in the field of human rights.

The Working Group hopes that, should the Commission accept its arguments, the Economic and Social Council will devote a comprehensive study to this problem.

(4) The Working Group considers that in any case the Commission on Human Rights undoubtedly has the power to submit immediately draft recommendations on human rights to the Economic and Social Council. It request the Commission, if necessary, to avail itself of this right.

Question (b)

One could establish the right of individuals to petition United Nations, as a means of initiating procedure for the enforcement of human rights.

35. The Group has been helped considerably in the reply it gave to this question by two proposals made by the Indian Delegation, namely; (1) a document submitted by that Delegation for the abolition of discrimination and the protection of minorities (document E/CN.4/Sub.2/27); (2) a Working Paper drawn up by the Chairman in the course of the Group's work. This Working Paper has not been published or distributed, but its substance, with various amendments, is embodied in the decisions reached by the Group, which appear below as drafted.

36. To begin with, the Group found no difficulty in reaching agreement on the three following basic points:

/(1) The right

(1) The right to petition in respect of the violation of human rights shall be open not only to States, but also to associations, individuals and groups.*

Groups of individuals are here understood to mean groups of two or more persons not constituting associations properly so-called.

It appeared that if the right to petition were confined to States alone this would not furnish adequate guarantees regarding the effective observance of human rights. The victims of the violation of these rights are individuals It is therefore fitting to give them access to an international organ (to be determined), in order to enable them to obtain redress, as was formerly provided for under the system for the protection of minorities established under the aegis of the League of Nations. That is why the Working Group has

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* The Representative of the United States felt that the United Nations is not yet in a position to take effective and comprehensive action upon petitions. In this connection, she felt that the results of the work of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities might be of interest.

The United States member of the Sub-Commission, acting in an individual capacity, offered a thorough-going proposal pursuant to which petitions dealing with Discrimination and Minorities problems should be referred to small committees for negotiation of complaints wherever possible. This was, of course, a less "far-reaching" plan than that of incorporating machinery in a Convention. The proposal proved unacceptable to the Sub-Commission which concluded that one individual petition should now be considered, but otherwise contented itself with generalities. The Sub-Commission lagged behind the United States expert in this respect.

With regard to insertion in a Convention, the United States feels that it is all very well to set up machinery for curing all the ills which afflict human individuals, but it is another thing to see that this machinery will work.

On this point the United States believes in taking things up one by one, within the limits of foreseeable accomplishment. It believes that complaints should for the time being be handled under the Convention only when sufficiently important to be brought to the Commission by States. That is something which can be taken care of under a Convention with no excessive strain on existing machinery, and which can accomplish real good, with co-operation of the States and intelligence and luck.

If it works out well, the stage is set for taking up what may be the next development - the handling of individual petitions. That will be the time to consider the amendment of the Convention to open the door to petitioners. The United States fully realizes that the opening of the doors is an important point because in many cases the complaint of the individual is levelled against his own government, therefore his government can not be counted upon to see that it is brought before the Commission.

/extended

extended the right to petition to individuals and, of course, to the groups and associations which modern society often leads them to form.

(2) In the second place, the Working Group recognized that provisions relating to the system of petitions should be included in the proposed Convention on Human Rights.

Consequently there is a very marked difference between the concept adopted here and that which governed the solution of question (a). As regards the latter, the measures advocated in this report should either be mentioned in the Plenary Commission's Report, or, in the case of a delegation of powers to the Human Rights Commission, should be mentioned in the said Report and form the subject of a decision by the Economic and Social Council.

The reason for this distinction lies in the fact that the system of petitions gives rise to various organizational questions and should therefore be worked out in sufficient detail. Moreover, and above all, it should be noted that this system does not appear in the Charter, but is entirely new. All the present Members of the United Nations may not be disposed to accept it. Therefore, in order to establish it, a Convention separate from the Charter, namely, the Convention or one of the Conventions relating to Human Rights (should several Conventions be concluded) is required.

It should be noted that in such a case there would in future be two parallel systems for the protection of human rights. The first, and older, would be that constituted by the provisions of the Charter concerning human rights and by later developments of those provisions, i.e. by the Resolution of the Economic and Social Council of 5 August 1947, in connection with the action to be taken concerning communications received by the Secretariat* and by the decision of the Commission on Human Rights taken at its twenty-eighth meeting, outlining the work of an ad hoc Committee on Communications.** As the name implies this system would not be a system of petitions but one of communications. Its advantage over the other would be that it would be more general in the sense that it would include all members of the United Nations, but it would also no doubt be less effective or rather less "advanced". The second system on the other hand would be a system of petitions in the real sense of the word. It would be limited in geographical scope to States that had ratified the Convention setting it up and in consequence to associations, individuals or groups belonging to those States. Relating as it does to contractual obligations, the new system would, by definition, only be binding on the parties to the Convention.

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* Resolution No. 75 (V), document E/573.

** See document E/CN.4/AC.5/1.

Various members of the Working Group expressed their regret at this situation, but had to yield to the force of this elementary yet imperative judicial concept.

Two questions about the conventional character assigned to the system of petitions were, however, asked.

It was clear that the Convention to be concluded would be open to all Members of the United Nations, but the possibility of opening it to non-Member of the Organization also was considered. The Group thought that this point came within the province of the Second Working Group (on the Convention). It therefore left it in abeyance. At the same time, however, it resolved to bring it to the attention of the Drafting Committee and the Secretariat, for study by the latter.

Representatives of Non-Governmental Organizations present at the meetings of the Group also desired to know what would happen to these Organizations in the likely event of their having affiliated members belonging both to States that had ratified the Convention and to ones that had not. Would they in that case be refused the right to petition? The Working Group, after careful consideration and having left the examination of the point till the end of the list of six questions drawn up by the Rapporteur (see below), arrived at a solution which reconciles the legitimate desires of the Non-Governmental Organizations with the requirements of conventional law. It decided that: "Petitions from Non-Governmental (International) Organizations shall be permissible if they originate in a country or countries whose Government or Governments have ratified the Convention".*

Organizations satisfying the various requirements mentioned are therefore to be added to the list of those benefiting by the right to petition, as previously described. This amounts to an interpretative decision of the word "association" occurring in the list. The word should therefore be understood in texts produced by the Working Group to include not only national associations but international associations in the sense just defined.

The Working Group was convinced that no valid objections could be made to the idea of setting up, within the framework of the United Nations, the protection of Human Rights through a Convention separate from the Charter. In the first place under the head of Human Rights the Charter only contains brief provisions of which it would be no exaggeration to say that they call for, indeed postulate, specification. Secondly, there are already a certain

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* The Representative of the United States felt that if petitions are to be handled under the Convention, the petitions should be from nationals of States which are parties to the Convention. This would include non-governmental organizations which are organized under the laws of States parties to the Convention.

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number of precedents (for example the Peace Treaty with Italy and the function conferred by this Treaty on the Security Council for the Territory of Trieste) for treaties distinct from the Charter assigning to organs of the United Nations functions not provided for in the Charter. The only thing needed to make such a procedure perfectly legal is, of course, that the organ concerned should accept the task assigned to it.

(3) The Working Group resolved to request the Secretariat to draw up for the Drafting Committee a full and detailed scheme of regulations on the subject of petitions. However much it might have wished to, the Group was indeed unable to examine the question from all angles in the very short time at its disposal. The various decisions it has taken, in particular the fundamental ones about to be mentioned, should be regarded simply as bases for the Secretariat's assistance in working out the future regulations. Where necessary therefore gaps in them should be filled.

37. Having settled these three fundamental points the Working Group proceeded to a full general discussion of the question of petitions. To simplify the investigation the Representative of Belgium, acting as Rapporteur, submitted a list of six main questions still to be dealt with, which the Group accepted.

These were as follows:

(1) Is it necessary to transmit all petitions direct to an International Court (to be specified) or to establish a Committee of first instance to examine petitions?

(2) If such a Committee is created, how would it be composed? Would it be composed of representatives of Governments, of experts or of representatives of International Non-Governmental Organizations?

(3) Would petitions be examined at a private sitting?

(4) What would be the powers of the Committee?

(5) If the Committee has powers of conciliation and such conciliation fails, could a petition be referred to the Court? By whom? (Question of creating a post of Attorney General, nominated by the Economic and Social Council).

(6) The status of International Non-Governmental Organizations.

The last point has already been dealt with above.

In connection with the other five, the text of the decision adopted by the Working Group on the basis of a working paper drawn up by the Chairman is given below:

(1) A Standing Committee composed of not less than five independent (non-government) men and women, shall be established by the Economic and Social Council. The term of office of the members, their style and qualifications shall be decided by Resolution of the Economic and Social Council. The members of the Committee will be elected by the Council from

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lists submitted by those States which have ratified the Convention or Conventions on Human Rights.

(2) The function of the Committee shall be to supervise the observance of the provisions of the Convention or Conventions on Human Rights. To this purpose, it shall:

(a) collect information; i.e. it will keep itself and the United Nations informed with regard to all matters relevant to the observance and enforcement of Human Rights within the various States. Such information will include legislation, judicial decisions and reports from the various States, as well as writings and articles in the press, records of parliamentary debates on the subjects and reports of activities of organizations interested in the observance of Human Rights;*

(b) receive petitions from individuals, groups, associations or States; and

(c) remedy through negotiations any violations of the Convention or Conventions and report to the Commission on Human Rights those cases of violation which it is unable to remove by its own exertions. The Committee may act on its own information or on receipt of petitions from individuals, groups, associations or States.

(3) The Committee will proceed in private session to examine the petitions and conduct negotiations, it being understood that the decisions arrived at will appear in reports submitted by the Committee to the Commission on Human Rights. Such reports will be made public by that Commission, should the latter deem it advisable.

38. It is obviously impossible to give a complete and thorough comment on the above decision. There are, however, three points which should be brought out.

39. It will be seen that the Working Group, having decided in favour of the establishment of a Committee to act prior to any judicial proceedings, propose that the Committee should be permanent in character and composed of experts, and that the latter should be appointed by the Economic and Social Council. The Group considered that this procedure would provide the best guarantee of impartiality. The proposed action by the Economic and Social Council is to be explained by the fact that the latter constitutes the highest authority in our particular sphere. There is no contradiction between this solution and the one of asking the said Council to delegate powers to the Commission on Human Rights in respect of recommendations, since the Council's function is limited to the appointment of the Standing Committee.

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*. The Representative of the United States felt that this was essentially a job for the Secretariat.

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40. In the course of discussion it was made clear that the Standing Committee could, naturally, itself appoint Sub-Committees, including a Sub-Committee to examine the receivability of petitions in accordance with regulations to be drawn up by the Secretariat. It is obvious that five people cannot be given the immense task of themselves undertaking all the work connected with petitions. It is also quite clear that the Standing Committee will be able to utilize the services of the Human Rights Division of the Secretariat, which however will need strengthening if the Group's proposals are adopted.

41. The second point which calls for comment is connected with the Standing Committee's function. That function is, essentially, one of conciliation, not of arbitration, and still less of final decision. The Standing Committee will have to aim at reconciling opposing points of view, and it is only if its efforts at conciliation fail, that other solutions, such as judicial proceedings will come into consideration. The Working Group's main object was to build up a coherent system, culminating, if one accepts its thesis in judicial proceedings. It therefore provided successive barriers against a spate of petitions or their abuse. The first will be constituted by the provisions of the regulations relating to receivability. Only petitions which have surmounted that barrier will come before the Standing Committee. Only those which have subsequently formed the subject of an attempt at conciliation will ultimately come before the Court. In that way, the Working Group feels that it has opened the door to democracy and closed it to demagogy.

42. It should here be made clear that the provisions advocated by the Group in respect of petitions of course leave intact the authority which already belongs to the Security Council and the Trusteeship Council in their particular fields. Similarly, the Security Council remains the competent body to decide the action to be taken as the result of violations of Human Rights when they give rise, within the meaning of the Charter, to situations or disputes affecting the maintenance of international peace and security.

43. A third and last point must finally be mentioned. As has been seen, the Group recommended that the Standing Committee should examine petitions and conduct negotiations in private session. That procedure, which is reminiscent of that of the League of Nations in respect of minorities, is also comparable to the rules already laid down for examining communications addressed to the Secretariat. The Group considered that if such a decision had been made in the case of communications, the same should a fortiori apply to petitions, which gave rise to proceedings involving greater rights, and therefore greater duties. The Group however provided that reports would be sent by the Standing Committee to the Commission on Human Rights, so that

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the latter would be kept informed of decisions taken, and that the Commission could, if it thought opportune, make public the reports it received.

Suggestion (c).

The establishment of a special organ of the United Nations with jurisdiction and the duty to supervise and enforce human rights motu proprio.

44. The Group considered that its comments on this suggestion were largely implied in its comments on the preceding one. It decided, however, to mention in this Report the possibility of setting up, at a later stage in the international development of Human Rights, either a subsidiary organ in virtue of Article 7, paragraph 2 of the Charter, or even a specialized agency.

45. The latter would be established by a Convention and might be called, for instance, the International Human Rights Organization.

46. The Group attaches importance to a word contained in the text of Suggestion (c), the word "enforce". It linked the study of the measures evoked by that word to that of measures to guarantee the execution of the decisions given by the International Court of Human Rights, which, as already stated, will be dealt with in the third part of this report.

Suggestion (d).

The establishment of jurisdiction in this organ to consider cases of suspension of the Bill of Rights, either in whole or in part.

47. Various representatives said they did not quite understand the implications of this suggestion. If it is a matter of violations of Human Rights, as defined in the Convention or Conventions to be concluded, the Group believes such cases are covered by the provisions envisaged in connection with Suggestion (b), and by the provisions relating to the establishment of an International Court of Human Rights.

Suggestion (e).

The establishment of local agencies of the United Nations in the various countries with jurisdiction to supervise and enforce human rights therein. The Commission might find it useful, in this connection, to study the precedents established, for example, by the Convention between Germany and Poland on Upper Silesia of 15 May 1922.

48. The Group's comment on this suggestion was identical to that given in the second paragraph of its comment on Suggestion (d). In addition, some representatives expressed the view that the solution suggested in the text of Suggestion (e) was premature and might perhaps deter some countries from ratifying a Convention in which it was embodied.

Annexes

1. Following the intervention of various representatives, the Working Group studied the problem of the ratification of the Convention or Conventions

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that are to come into being.

It decided to incorporate in this report a formal recommendation to States Members of the United Nations to ratify the Conventions in question, and in particular to accept the machinery advocated in the replies to questions (a), (b), (c), (d) and (e) on pages 87 and 88 of the Secretariat's Memorandum.

With the final recommendation to the General Assembly in view, the Group also wished to remind the Human Rights Commission and the Economic and Social Council of the right possessed by the General Assembly and recently exercised in the case of the Constitution of the World Health Organization, to invite the Members of the United Nations to ratify certain Conventions.

2. In the course of its study of the system of petitions the Group considered the question whether it would be appropriate to confine petitions to cases of infringement of the Convention or Conventions on Human Rights, or whether it might not be preferable to widen their scope to include other treaties also, already concluded or to be concluded, containing provisions on human rights, and especially the Peace Treaties signed at Paris on 10 February 1947.

This question has repeatedly given rise to exchanges of opinion in the Group. The Group found that it was bound up with complex and difficult legal problems, which it was not in a position to examine. As in the question of accession of non-Members, and in that of the rules relating to petitions, the Group decided to ask the Secretariat to investigate this matter, and to submit its findings to the Drafting Committee.

It will be noted, however, that a provision relating to the protection of human rights on the basis of treaties other than the Convention or Conventions now under discussion, has been incorporated in the Draft Statute for the International Court prepared by the Group. But this provision applies to disputes between States, and not to the system of petitions (see below).

3. On pages 88-89 of the Secretariat's Memorandum the following suggestion is formulated:

> "The Commission may want also to discuss the roles which the Security Council might play in the implementation of the (Bill). According to Article 2, paragraph 7, of the Charter, the exception of domestic jurisdiction cannot be imposed in cases where enforcement measures are being taken by the Security Council under Chapter VII. The Commission may want to consider the question whether the Security Council should not be given a more extended jurisdiction in the matter (E/CN.4/W.4 pages 13 and 14)".

It has already been pointed out that the draft drawn up by the Group for the implementation of the Convention on Human Rights did not and could not

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infringe on the prerogatives of the Security Council as defined in the Charter with regard to the settlement of international disputes. Conversely, the Group negatived the Secretariat's suggestion regarding a possible extension of the Security Council's powers for the protection of human rights. In expressing this opinion the Group was not prompted by legal considerations, seeing that it would of course be quite possible to invest the Security Council with new functions through a new Convention provided the Council agrees to assume them. But the Group considered that the Security Council was certainly not the appropriate organ to deal with the international protection of human rights as such. In taking this view the Group has not departed from its policy which is to find in each case the organ technically most suited for the international protection of Human Rights.

49. International Court of Human Rights.

The Working Group had repeatedly had occasion during its earlier discussions particularly during its discussions on petitions, to regard with favour the suggestion that the general machinery for the protection of human rights should be supplemented and rounded off, so to speak, by the institution of a right of appeal to an International Court.* Several representatives had expressed strong support for the suggestion, and this principle had been tacitly implied during the progress of the work.

However, divergencies of views had come to light on various points. They re-emerged when the Working Group began consideration of paragraph 4 of the Secretariat's Memorandum, i.e. the Australian proposal. The Working Group was unanimous in admitting the principle of a right of appeal to an International Court, but some representatives (those of Australia, Belgium and Iran) demanded the creation of a new Court, whilst others (the Representative of India and the United Kingdom observer) on the other hand, favoured the employment of the present International Court of Justice. There were also two variants of the latter view. One favoured and one opposed the creation under Article 26 of its Statute of a special Chamber of this Court, to deal with human rights. There were also different opinions as to whether final decisions (in other words, binding decisions), or merely advisory opinions should be obtained from the present Court.

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* The Representative of the United States felt that such a proposal must be considered very seriously, and that it could not be put into effect in the foreseeable future. She further had grave doubts regarding the desirability of making it more difficult for States to ratify the convention by inserting in it far-reaching provisions regarding an international tribunal.

The Chairman submitted a compromise proposal, in the following terms:

"If a dispute arises as to whether any violation has taken place, the matter in dispute shall be referred for judgment to a Panel of 3 or 5 Judges of the International Court of Justice, to be appointed for the purpose by the Chief Justice of the Court, or in a Standing Order of the Chief Justice."

According to this proposal therefore, no new Court was set up; but on the other hand the present Court was to be requested to pronounce final decisions. This, at any rate, was the construction placed on the foregoing text during the course of the discussions.

The Working Group did not feel it should take up this text.

It also decided not to take up a draft prepared by the delegation of the United States of America and presented as document E/CN.4/37. This draft contained an Article 5 laying down a complete procedure to be followed in case of the violation of the Convention on Human Rights. Under this procedure, the advisory opinion of the International Court of Justice might be requested under certain conditions.

The Working Group considered that this machinery was somewhat complicated and also did not coincide, in its preliminary provisions, with the views and solutions on which the Working Group had earlier agreed.

It was generally considered that the idea of advisory opinions was inadequate. The Working Group was under no misconception as to the usefulness of such opinions, but believed them incapable of producing the desired guarantee of redress and action in the case of a violation of the Convention on Human Rights. The Working Group then took up the idea of final decisions and, viewing the problem in this light, was thus led to choose between the present Court and a new Court.

Two whole meetings, the sixth and seventh, were devoted to this discussion.

The following arguments were adduced against the establishment of a new Court:

(1) It is not advisable to increase unduly the number of international organizations, particularly organizations of a judicial character. A Court of Genocide is proposed one day, a Court of Human Rights the next: where will one call a halt?

(2) Some States may be reluctant to undertake such obligations. Hence the risk of not securing sufficient ratifications of the Convention would be increased.

(3) What parties shall have access to this new Court? If all those having a right to make petitions, and not merely States, are admitted, the foregoing

/risk

risk would be heightened, even if the system made it obligatory that conciliation should first be sought before the Standing Committee on Petitions.

(4) It is just possible that binding decisions could be obtained without recourse to the creation of a new Court, i.e. by widening the jurisdiction of the present Court through the medium of the Convention. Precedents for this line of action can be cited in the case of the former court of the League of Nations, the Permanent Court of International Justice. These could no doubt be followed in the case of the International Court of Justice, whose Statute is virtually identical with that of its predecessor. However, the whole question is whether, at the present time, a large number of States would be prepared to accept the principle of final and binding decisions in the field of the violation of human rights.

In reply to these contentions, the advocates of the Australian proposal set forth the following considerations in support of their own thesis:

(1) either a full and effective observance of human rights is sought, or it is not. If it is sought, then the consequences of this principle must be admitted and the idea of compulsory judicial decisions must be accepted. Certain States may in fact be reluctant to subscribe to this point of view. But the others will be able to begin now to lay the foundations of a true international protection of human rights, and through their example, eventually induce the dissidents to join them.

(2) it would not be possible to obtain compulsory judicial decisions, on a scale larger than could be obtained by the creation of a new Court, on the basis solely of the Statute of the present Court.

It should not be forgotten that the jurisdiction of the International Court of Justice is still voluntary, in principle; in other words, matters in dispute are only referred to the Court following an agreement in the form of a compromise between the parties. Admittedly Article 36 of the Statute provides for the possibility of conferring the power of compulsory jurisdiction upon the Court in regard to legal disputes concerned with four stated subjects. Admittedly these subjects include the fact of breaches of international obligations in general and the right of the Court to determine any reparations to be made. But it should not be forgotten that the application of Article 36, which might be useful in cases of violation of a Convention on Human Rights, is conditional upon formal declarations by the States parties to the Statute of the Court. This means, in fact, that if compulsory jurisdiction is to be obtained in the field which concerns the present Commission, it must first be agreed to. Therefore, there is no visible difference, as far as prospects of success are concerned, between what was formerly styled the Voluntary Clause for Compulsory Arbitration and the necessity for concluding a new Convention

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for the establishment of a new Court. In point of fact, the field of expansion of Article 36 would probably be no wider than that of a Court of Human Rights.

(3) If the power of compulsory jurisdiction were to be conferred on the present Court, not by virtue of a general declaration made in accordance with Article 36, but by virtue of a Convention, distinct from the Statute and relating solely to human rights, the same ratification problem would immediately reappear. It is not clear why, once this stage has been reached, a new Court should not, in the last analysis, be established.

(4) A further argument, worthy of consideration and frequently cited in this Report, can be adduced in favour of the establishment of such a Court, namely, the argument of technical qualifications. An inescapable corollary to modern civilization has been the specialization of men and institutions and, to a certain extent, the complication of machinery. There can be no doubt, however, that disputes concerning human rights would be appraised more authoritatively by judges chosen for this purpose than by judges possessing only general qualifications.

(5) Finally, there should be provisions restricting access to the new Court. It would not be possible, in the present state of international relations, for individuals, groups of individuals and associations to be invested with the character of parties to a dispute and the right to bring cases before the Court. However, a compromise solution between the previous system, limited to States, and a system of such large dimensions could be obtained by conferring upon the Commission on Human Rights the power to bring before the Court disputes in respect of which the conciliation procedure in the Standing Committee on Petitions had been without effect. The Commission would retain the power to decide what action should be taken in this connection on the reports of the Standing Committee. This would create a further barrier - the third which would help to prevent the list of cases from becoming unduly large.

The foregoing were the arguments advanced for and against the establishment of a new Court. The Working Group decided to include them in its Report. It is for this reason that they have been developed at such length.

50. In response to a proposal by the Rapporteur, three questions were placed before the Working Group:

(1) Should an international Court be empowered to constitute the final guarantor of human rights?

(2) In the event of an affirmative answer, should this Court be a new Court or a special Chamber of the International Court of Justice?

(3) Should the Court, whatever its character, have the right to pronounce

/final

final and binding decisions, or merely to furnish advisory opinions?

With regard to the first question the Working Group voted unanimously in the affirmative, 4 in favour and none against.

With regard to the second question, there were three votes in favour of a new Court (Australia, Belgium and Iran) and one against (India).

The vote on the third question was unanimous too, 4 in favour and none against.

When these decisions had been taken, the United Kingdom and the United States observers pointed out that each of the States Members of the Human Rights Commission naturally retained the right to bring up the whole problem again in the Plenary Commission. The Chairman answered that that was so, and that the above statements would be mentioned in the Group's report.

51. The Australian Representative asked for a vote on the following proposal:

"The Court shall have jurisdiction to hear and determine:

(a) disputes covering human rights and fundamental freedoms referred to it by the Commission on Human Rights;

(b) disputes arising out of Articles affecting human rights in any treaty or convention between States referred to it by parties to the treaty or convention."

This proposal was adopted unanimously. It must therefore be regarded as a decision of the Group. It was expressly understood that it would take the place, in the Australian draft resolution given in paragraph 4 of the Secretariat's memorandum, of paragraphs 2, 3, 4 and 8 of that draft.

52. The Group then decided to transmit to the Drafting Committee - if, of course, the Commission approved the decision - the complete text of the Australian draft, as amended by the above proposal. It will be noted that, in the new text, the jurisdiction of the International Court of Human Rights covers not only the protective convention or conventions, but also any other treaties containing clauses relating to human rights. In such cases, the matter will not be brought before the Court through our Commission; the right to do so belongs directly and exclusively to the States parties to the treaties in question. The Australian proposal thus endeavoured so far as possible to take account of two objections: the objection that some of these treaties (the peace Treaties in particular) have been concluded outside the framework of the United Nations, and the cognate objection that among the parties to the said treaties are States which are not Members of our Organization.

53. It should also be pointed out that all the decisions taken by the Group might have to be incorporated in any Convention on Human Rights. The

observations previously made with regard to the nature and consequences of the conventional system thus established are therefore applicable here.

54. Finally, the Group studied the measures to be adopted to ensure, should the necessity arise, the implementation of decisions of the International Court on Human Rights. A discussion took place about the choice of the United Nations body to which the Convention would entrust this particularly delicate task. The Group had to choose between the Security Council and the General Assembly. It decided in favour of the latter, although it only has powers of recommendation, because of the authority conferred on it by the Charter with regard to questions of economic and social co-operation.

55. The Group also decided to emphasize in its report the fact that cases have hitherto been rare of States deliberately going against international judicial decisions or arbitral awards. It expressed the unanimous hope that this might continue to be the case in the future.

56. In conclusion, it should be mentioned that the Group, when attributing jurisdiction to the new Court to settle disputes relating to human rights, constantly bore in mind the terms of Article 95 of the Charter, which are as follows:

> "Nothing in the present Charter shall prevent Members of the United Nation from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future."

57. Annexes.

(1) The Group felt that no useful purpose would be served by studying the question of creating the post of an Attorney-General for the International Court on Human Rights, as had been originally suggested. It considered that the duties of such an official in connection with the Convention or Conventions would in point of fact be carried out by our Commission.

(2) The Group was not called upon to examine clauses of the Convention entailing special measures of implementation. As a matter of fact, it had finished its work before the second Working Group. It was, however, realized that clauses and measures of that kind might subsequently have to be studied in connection either with the Convention which is still being discussed, or with other Conventions relating to the protection of human rights.

(3) On the eve of the day it finished its work, Monday, 8 December 1947, the Group received the report prepared by the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities (document E/CN.4/52).

It noted with interest Section IV of the report which deals with the problem of implementation. It was glad to observe that the Sub-Commission

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had drawn attention to the "vital importance" of the problem. It shares the Sub-Commission's view that the relevant machinery forms "but one part of the machinery for implementation of human rights as a whole." It hopes the Sub-Commission will complete its study of such machinery by a date which will allow the Drafting Committee to take it into consideration if necessary.

The Group feels however, that it is not incumbent upon it to deal with the problem. The measures of implementation which it advocates are applicable to members of minorities, just as are human rights in general. As regards measures aimed at guaranteeing the implementation of rights belonging to minorities as such, the Sub-Commission will doubtless consider that such measures should be based on special treaties.

ANNEX C

PART II

COMMENTS ON THE REPORT OF THE WORKING GROUP
ON IMPLEMENTATION

1. The Representative of Australia made the following statement at the time the Report of the Working Group on Implementation was discussed in the Commission on Human Rights:

"On this report the Australian Delegation hoped to have heard some concrete analyses of its contents and some worthwhile observations on the general framework of the scheme of implementation the working group has submitted, and how this machinery will work. Unfortunately we have heard few comments, and it seems to me, Madam Chairman, that the best service I can perform at this stage is to try and convey a clear picture of this machinery. In our opinion it should work automatically from the time the Convention comes into force. It would be wrong to consider definite machinery for implementation only after the entry into force of the Convention.

"At the outset we dealt with the question of domestic implementation It will be an obligation on each State to implement into its own national law as fundamental law the principles of the Convention on Human Rights: not in ordinary statute law, not regulations or administrative acts which the executive or legislative organs of Government can override at any time, but law which is so fundamental and constitutional that it can never be overridden. Unfortunately the history of the world has proved that that is not sufficient, and those representatives who suggest if we go beyond that we are interfering with the principles of national sovereignty are apt to forget that violation in the past has largely been violation by Governments, and what we are endeavouring to ensure in the future is that protection and enforcement become a reality.

"We come now to International Implementation. We have in the United Nations a provision to receive and deal generally with petitions or communications as some prefer to call them. These are adequately covered, and we have machinery for this general right. We have no machinery, however, for the question of enforcement of the provisions of the Covenant. So we feel that this Human Rights Commission should be the body entrusted with certain powers which can be delegated by the Economic and Social Council. This was the first main principle the working group agreed on. Then we decided to recommend the creation

/of a standing

of a standing committee of not less than five members to be appointed by the Economic and Social Council, from a panel of names recommended by ratifying States. This body would be given authority to mediate and conciliate and if possible to rectify all alleged violations of human rights. Of course it would have sub-committees, one being for the purpose of screening petitions, with a view to rejecting all frivolous and vexatious claims. If the Standing Committee could not succeed it would then submit the dispute to the Human Rights Commission. The Commission on Human Rights, after considering the question, would then decide which cases should be sent before the international tribunal. The parties concerned in the petition need not necessarily be Governments; they can be individuals or groups of individuals, or associations, or States - but remember this field of petition is limited to those States or individuals in those States which actually adopt the Convention.

"We come now to the international tribunal, and there is still a doubt in the minds of some of the representatives here whether there should be a special court or whether there should be a Division or panel of the International Court of Justice. I would just like to supplement the remarks of my Belgian colleague, and the reasons can be very briefly summed up. The Commission on Human Rights is not one of those organs specifically mentioned in the Charter which can seek an advisory opinion of the International Court, as at present established. This is one of the main legal objections. Even if it could do so that opinion is only one pertaining to a legal subject. We want more than an advisory opinion. We want a binding decision in this particular field which will be binding on the State or parties concerned, and at the same time establish a body of international law which would, we hope, automatically settle hundreds of similar cases. Even if the Court does give an advisory opinion in this field of Human Rights, that opinion has then to go all the way back to the United Nations, and probably have to wait until it could be considered in the form of a recommendation by the General Assembly.

"Our main problem is that of dealing with the infringement of the rights of minorities or individuals or groups of individuals rather than of States, and if the Court merely were a division of the present Court it would be very difficult to deal with the class of case we have in mind. The last reason against a division of the present Court of Justice is that it would mean an amendment of the Charter to give it competent jurisdiction in this field, and you are all aware of the

/difficulties

difficulties of obtaining an amendment to the Charter. It is not mentioned in the report, but it was the view of some representatives that a division of the international Court would be favoured purely on the grounds of expense. I believe an acceptable solution would be for the Court of Human Rights to be set up at the site of the present Court whereby it could utilize the administrative machinery, library, and other facilities there which have been created and established by the International Court. The additional expense for a separate International Court of Human Rights would thus be very little. For the reasons I have indicated it seems to us imperative that we must have an independent Court and not merely a branch of the existing Court owing to the legal and other limitations I have indicated."

2. The Representative of France requested that the letter which he addressed to the Chairman of the Working Group on Implementation be considered in connection with the Report of that group. This letter has been circulated separately as Document E/CN.4/AC.4/1.

3. The Observer of the Union of Soviet Socialist Republics stated, in the course of the discussions of the working group, that the measures proposed by this group were contrary to the principles of the sovereignty and independence of States, that they opened the possibility of intervention in the internal affairs of States, and that they therefore were not in conformity with the principles of the United Nations and were inacceptable.

4. The Representative of the United Kingdom wished to draw the attention of governments to the following Articles in the United Kingdom draft International Bill of Rights (Annex 1 of Annex B of Document E/CN.4/21):

Article 5

A failure by any state party hereto to fulfil the obligations under Article 2* is an injury to the community of states and a matter of concern to the United Nations as the community of states organized under the rule of law.

Comment to Article 5

This Article is meant to apply to failures of a substantial character. It is not intended to apply to failures of a trivial or technical character.

Article 6

1. While declaring their readiness to consider the adoption of further procedures designed to strengthen the international protection of fundamental human rights and freedoms, the States parties hereto accept the right of any of them, acting in the interests of the community of States, to bring to the attention of the General Assembly of the United Nations any violation by any of them of the provisions of this Bill of Rights as

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* NOTE: This corresponds to Article 2 of the Draft Covenant prepared by the Commission.

/constituting

constituting a situation likely to impair the general welfare or friendly relations amongst nations and as a violation of the purposes and principles of the United Nations within the meaning of Article 14 of the Charter.

2. Any party hereto which is thus alleged to have violated the provisions of this Bill of Rights shall have the right to request the General Assembly to obtain the advisory opinion of the International Court of Justice thereon and to refrain from taking any further action on the matter until this opinion has been obtained, and if such a request is made the parties hereto agree that they are bound to support the request.

Comment to Article 6

It would be possible to insert here an additional provision under which all parties to this Bill would agree that in the event of any alleged violation of the Bill being brought before the General Assembly they would support a proposal that the matter should first be considered by a committee composed only of members of the United Nations who are parties to the Bill.

Article 7

The parties hereto agree that any one of them which is found by a Resolution of the General Assembly adopted by a two-thirds majority persistently to have violated the provisions of this Bill of Rights should be deemed to have violated the principles of the Charter of the United Natior and therefore be liable to expulsion from the organization under Article 6 of the Charter.

5. The Representative of Uruguay requested that the following comment on the Report of the Working Group on Implementation be included in this Report:

> "The Representative of Uruguay, owing to circumstances over which he had no control, did not reach Geneva until 10 December, when he immediately began to participate in the work of the Commission on Human Rights, but was unable to collaborate with the Working Group on the Implementation of the Convention on Human Rights.
>
> "The latter body, which started its work on 5 December, completed its task with praiseworthy diligence on 9 December, when it submitted an intelligent and profound study in which I am sorry I did not participate. I therefore request that these observations be appended to the Report of the Working Group to which I belong, in order to put on record the Uruguayan Delegate's opinion on the ways and means of effectively implementing the international law which is to be applied, as a system for protecting individuals and groups of individuals.
>
> "1. The main cause of the differences between the view of the Representative of Uruguay and that put forward by the Working Group in its most valuable report, is the fact that the Report is in the main

/based on

based on the Resolution of the Human Rights Commission, which separated the Declaration of Rights, etc. from the Convention, and gave it the form of a recommendation to States. Uruguay, owing to the nature of her public law and international policy, and by reason of the fact that it is a purpose and principle of the United Nations to develop and promote respect for human rights and fundamental freedoms, and having regard to the Resolutions adopted at the Inter-American Conference of Mexico on the problems of war and peace, considers that the Declaration of Rights should be embodied in a Convention, with clauses ensuring the international protection of human rights. Her views are based on Resolution XL of the Mexico Conference which, after taking note of the Declaration of the United Nations on the international protection of essential rights, affirms that if such protection is to be effective the rights must be defined in a Declaration adopted by States in the form of a Convention.

"2. Flagrant and general violation of fundamental rights and freedoms prevents the existence of a rule of law and of political democracy, becomes a threat to peace, as Roosevelt prophesied at the Buenos Aires Conference in 1936, and is to be regarded as a matter affecting international public order. Uruguay maintained that the notorious and repeated violation of human rights and fundamental freedoms might, owing to its far-reaching consequences give rise to consultation between Governments or to action by the organs set up to ensure the implementation on the continent, of international law. In the preamble to the Treaty on the "Inter-American Peace System" approved at Rio de Janeiro on 2 September 1947, it is laid down that for the American community it is "a manifest truth that juridical organization is a necessary condition of security and peace and that peace is based on justice and moral order and therefore on the international recognition and protection of the rights and freedoms of the human person, etc., etc."

"Consequently, that being the core of the matter, the Representative of Uruguay is compelled to maintain that the Declaration of Rights representing the inter-nationalization of the constitutional right of protection of the individual should have binding force on all States. It must be a positive obligation on all States and therefore the text of the Declaration must provide for three things:

(a) the embodiment of the Declaration in the law of the nation;

(b) the abrogation of any international law which is contrary to the agreed Declaration;

(c) the impossibility of abrogating or amending the Declaration except by international agreement.

"The American

"The American Republics have declared that international law is the effective rule of their conduct; they are at present studying declarations to be adopted on the subject of the rights and duties of the individual and of States, taking into account, we hope, the fact that what has been accepted as the essential principles of international law must shortly be embodied by the appropriate means in municipal law. (Resolution XII - Conference of Mexico).

"3. The duty of States to ensure respect for fundamental rights and freedoms is embodied with legal force in the Charter of the United Nations. It is a matter of applying an existing law, and not of recommendations. It is a common purpose which nations must endeavour to achieve. It represents a fundamental principle, which in case of repeated violation, may result in the expulsion of the offending State. Owing to its supreme importance to civilization, and for the sake of international order, the Economic and Social Council of the United Nations can make recommendations to promote respect for those rights and freedoms and make them effective. Definitions and rules concerning those rights and freedoms may be lacking, but their existence is established with the force of positive international law, binding on all Member States.

"I considered, therefore, that even in the absence of a Declaration or Convention, supreme importance will always attach to the application of the system of international protection as required by the Charter of the United Nations in respect of those human rights and freedoms proclaimed as important principles of the international organization.

"4. We are in favour of wide recognition of the right of individuals and groups to petition international authorities, and we agree with the judicious and sagacious observations in the Working Group's Report, concerning the need for establishing rules in this connection.

"5. With regard to the organs to be established to ensure respect for human rights and freedoms it should be mentioned that both in a report of the Advisory Committee on the political defence of America, over which I have the honour to preside, and in other official proposals, the establishment was suggested of an Inter-American Advisory Committee to safeguard human rights, with power to study and make recommendations on the matter, its activities being co-ordinated with the Inter-American Economic and Social Committee and the Economic and Social Council of the United Nations.

/"We are not

"We are not in favour, in this connection, of setting up local or regional organs of the United Nations as far as America is concerned, especially if agencies for the same purpose are established inside the American system. When internal remedies have been exhausted in each State, and after the procedure of petition and the various stages of attempts at conciliation on a continental level, and international recommendations, there would come into play in special cases a well-defined procedure for recourse to international jurisdiction. Uruguay shares on this point the commendable views expressed in the draft of the Representative of Australia, supported with amendments by the Working Group.

"We are seeking the juridical organization of mankind, and the pacific solution of all disputes through application of the law. For the reasons given under 2. above, we are in favour of an international jurisdiction for the protection of human rights in clearly defined cases to be specified in the appropriate statute. A point to be studied is, in our opinion, whether the jurisdictional - I repeat jurisdictional - organ is to be a special independent Court, or a Chamber of the International Court of Justice. Thus individuals and States will be subject to law, and all will feel assured of equality under juridical principles applied by a competent and impartial judge.

CONCLUSION

"Subject to the above observations, the Representative of Uruguay agrees with the Working Group's recommendations of principle, with the exceptions, for juridical reasons of form, of the proposed delegation of powers to the Commission on Human Rights; he agrees with the well-founded views on the juridical powers of the organs of the United Nations, especially as regards the Assembly and Security Council, etc. and cordially endorses the proposal to establish, under the aforesaid conditions, an international jurisdiction to protect human rights and freedoms."

United Nations | *Nations Unies*

ECONOMIC AND SOCIAL COUNCIL | **CONSEIL ECONOMIQUE ET SOCIAL**

UNRESTRICTED

E/600/Add.1
13 February 1948

ORIGINAL: ENGLISH

REPORT OF THE SECOND SESSION OF THE COMMISSION OF HUMAN RIGHTS

ESTIMATE PRESENTED BY THE SECRETARY-GENERAL IN ACCORDANCE WITH RULE 30 OF THE RULES OF PROCEDURE

1. If the Secretary-General is instructed by the Economic and Social Council to carry out without delay the studies recommended by the Commission in connection with Prevention of Discrimination and Protection of Minorities, the Division of Human Rights will have to add to its present staff one senior official and one secretary who, with the help of the existing staff, would be entrusted with the immediate carrying out of these studies. This would involve during 1948 an additional expenditure of $9,000.

2. The Report carries one item for which there exists no budgetary provisions. A sub-committee appointed at the twenty-ninth plenary meeting of the Commission to examine, among other matters, the Report of the United Nations War Crimes Commission submitted a proposal that the Secretariat continue the work of collecting and issuing all material in connection with war trials from 27 November 1947 and onwards and to undertake the publication of similar material of those countries which were not members of the War Crimes Commission.

3. This recommendation, which was approved by the Commission of Human Rights, was supported by the fact that the United Nations War Crimes Commission will cease to operate after 31 March 1948, and that it would be, therefore required that provisions should be made to record all material not contained in the Report of the War Crimes Commission.

4. The above work it is estimated would require the services of a consultant, acquainted with the existing material in London, for a period of nine months to one year. The cost of these services will be approximately $7,500.

United Nations | *Nations Unies*

ECONOMIC AND SOCIAL COUNCIL | **CONSEIL ECONOMIQUE ET SOCIAL**

UNRESTRICTED

E/600/Corr.1
4 March 1948

ORIGINAL: ENGLISH

REPORT OF THE COMMISSION ON HUMAN RIGHTS

SECOND SESSION

Geneva, 2 December to 17 December 1947

The representative of the United States has requested that the following correction be made in the Report of the Second Session of the Commission on Human Rights (document E/600):

On page 28, the comment appearing as paragraph B under the heading "Article 24" should be inserted under a new heading, "Article 23," as the comment refers to Article 23, not 24.

Affm. & Corrs.

Statement showing comments received on (1) the Draft Declaration on Human Rights, (2) the Draft Covenant on Human Rights and (3) suggestions for implementation contained in Document No. E/600.

Slip'd

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(1) Draft Declaration on Human Rights.

No. of Article.	COMMENTS from Legal Adviser.	Ministry of Home Affairs.	Ministry of Law.	Ministry of I. & B.	C.R.Wing.
1.	The first sentence if it has any meaning at all would seem to be partly a metaphysical and partly a political proposition. It is not true metaphysically and not true politically. The second sentence (1st part) is not true scientifically, i.e. as a fact of observation, the 2nd is a bad statement (i.e. bad in form) of an ethical proposition. The correct exposition would be something as follows:- Men are constituted by nature so as to be dependent for their fullest development in all their parts and functions on each other. Thus they have duties to each other, and for the ~~fulfilment of their~~ fulfilment of these duties and for their own fullest development have certain rights dependent partly on the fulfilment of their duties.	The Provisions are included in the preamble to the draft Constitution for India.	General Comments of the Ministry of Law. As regards the International Declaration on Human Rights, the proposed Declaration appears to set out merely certain ideals. As the Representatives of Australia and United States have stated, the language of the Articles of the Declaration is not satisfactory in as-much as it is both, declaratory and mandatory. It appears that it has been agreed that the Declaration imposes no legal obligation and requires no measures for implementation To much of the Declaration, there can be no objection, but it will not serve any useful purpose to make any detailed comments thereon at this stage, because at least one State namely U.S.S.R. has reserved its right to present a fresh Declaration on Human Rights.		
2.	Just requirements of the democratic State is a very vague term. Much depends, on the interpretation of "Just", and "democratic". The second part has been dealt with above.	----do-------			
3.	Religion, political or other opinion. I entirely disagree with the easy electicism of the idea that all religions are fundamentally the same that all are equally entitled to respect in all their doctrines that it does not matter what beliefs you hold, religiously, politically or socially or ethically, This is untrue as a fact. To illustrate, a belief in cannibalism or nudism is scarcely compatible with Art. 16.				
6.	The difficulty is to secure "impartial" tribunals. What about a dumb person. This is merely an objection to the form of the draft. "and to use....can speak" substitute "To use such means of communication with the Court as are open and most suitable to him".				

No. of Article.	Comments from Legal Adviser. Sub 8	Ministry of Home Affairs. Sno (55)	Ministry of Law. L 22-25/51	Ministry of I. & B. Sno (51)	C.R.Wing. Sno (58)
7.	Public trials. Some may for security, public morals, etc. have to be held in camera. Para 3. What is cruel or inhuman", what is "indignity" Some cruelty and some indignity must be offered to a prisoner.				
8.		Although prohibition of slavery is not expressly stated in the draft constitution of India, it is implied in the general statement in the Preamble.			
9.	Correspondence cannot always be inviolable.	Sanctity of home and correspondence shall be subject to the provisions of the Law of the State.			
10.	"In general interest" opens a wide scope to discrimination. Moreover it cannot be said that aliens have entirely the same rights as nationals or nationals with particular beliefs have the same rights of this kind as others.	Although right to emigrate is not explicitly stated in the draft Constitution for India, it is implied.			In many countries outside India where there is an Indian population, Indians have been segregated and where they are not segregated, there is a continual attempt to segregate them. The most glaring example of such segregation is in South Africa where Indians are not allowed to move from one Province to another of the Union or to reside in particular areas. The view that the Govt. of India have held is that this and other forms of segregation are contrary to fundamental Human Rights and hence opposed to Article 1(3) of the Charter. Indeed it is this contention which forms the basis of their case against South Africa before the General Assembly of the United Nations. C.R.Wing are, therefore concerned to see that any provision relating to freedom of movement within a State, incorporated in the Declaration on Human Rights, should be such as to enable the Indians in South Africa by virtue of it to shake off the restrictions on their freedom of movement and residence. C.R.Wing are afraid that as at present worded, Article 10 of the draft declaration may enable States to continue arbitrary restrictions on freedom of movement within a state and, generally, to continue the policy of segregation in South Africa and in other countries. For example, Article 10 says, "subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of Security or in general interest there shall be liberty of movement and free choice of residence within the border of each State" As regards the first part South Africa contends that it is not contrary to the principles and purposes

No. of Article.	Comments from Legal Adviser.	Ministry of Home Affairs.	Ministry of Law.	Ministry of I. & B.	C.R.Wing.
10.					of the Charter to segregate people of particular races in particular areas. Secondly, Article 10 permits segregation "in the general interest" or on the ground of "security". These are wide enough to place restrictions on free movement of Indians in South Africa and elsewhere. C.R.Wings suggestion is that except for specific reasons of health, or in a state of emergency, for reasons of security, there shall be complete liberty of movement and free choice of movement within the borders of a State.
11.		The intention of this Article seems to be that a state may grant asylum from persecution and the State from whose persecution asylum is sought shall not have any right to question the grant of asylum by another state to a person who is not a criminal or whose acts are not contrary to the principles of the United Nations. On this view this can stand.			
12.	Fundamental civil right is not defined anywhere.				
13.	What then is the "Individual" If polygamy is allowed, presumably polyandry must also.	Protection of marriage and family is only implied in the draft Constitution of India.			
14.	2. meaning of "arbitrarily" is not clear.				
15.	The right to nationality is not clear to me. It is an endeavour to avoid Statelessness but this can hardly be called a right.	Developments in this direction may be awaited and provisions can stand.			
16.	1. Seems meaningless. No one can stop private thought or ethical perception. If it means e.g. "a pacificist cannot be conscripted, it is a dubious proposition. 2. See above. What about right, if any, to proselytize.				
17.	They are extremely doubtful propositions to me.				
18.	---------do----------				
19.	Why is "not inconsistent with this Declaration" used here and not in other articles.				

General Comments

From time to time we have had occasion to comment on particular aspects of the draft proposals for the formulation of the International Bill of Rights, bearing in mind principally the denial of human rights to Indians outside India. These views are already known to the External Affairs Ministry and Representatives nominated by us on the Human Rights Commission and on the Special Commission for the protection of Minorities and discrimination. The discussions relating to the formulation of a Court on Human Rights have now reached an advanced stage. It is obvious that we cannot go on repeating the same point of view time and again. Our comments at this stage have, therefore, to take into account not only what we should like to be done with regard to Human Rights but what is possible to secure the maximum agreement amongst the nations of the world so as to make the International Bill of Rights and the Machinery for implementation generally acceptable.

The substance of the discussions so far appears to be the following:-

(a) There should be a declaration on Human Rights.

(b)There should be a ~~declaration~~ Convention on Human Rights, signed and ratified by Member Nations.

(c) There should be suitable redress for any infringement of Human Rights. Such redress may be by way of

(i) incorporation of the provisions of the Convention on Human Rights in the Fundamental Laws of a State ratifying it, and action by such States to see that their national laws cover the contents of the bill, so that no executive or legislative organs or government can over-ride them; and that the judicial organs alone shall be the means whereby the rights of the citizens of the States set out in the Bill are protected.

(ii) petitions to the United Nations by not only States but individuals and associations.

(d) Establishment of a suitable machinery for the enforcement of Human Rights.

As regards the question whether there should be both a declaration and a convention on Human Rights, C.R.Wing's view is in the affirmative. The declaration on Human Rights would have a great moral value and even though not technically as binding as the proposed convention will be, in the nature of a proclamation that all Member States of the United Nations agree to adopt the contents of the declaration as directive principles of State policy. It will be recalled that the same scheme has been adopted in the Draft Constitution for India and it has been decided to lay down directive principles of policy in contra-distinction to justiciable and fundamental rights.

No. of Article.	Comments from				
	Legal Adviser. Sub P	Ministry of Home Affairs. Sno (55)	Ministry of Law. H 27-29/51	Ministry of I. & B. Sno (51)	C.R.Wing Sno (58)
20.	Should, there not be some limitation? A private wrong to an individual could hardly be within the purview of UNO.				
21.	What is the meaning of "effective part". Does it merely mean a "right to vote". "periodic might mean "at fixed intervals" or an "certain fixed happenings" or both.	Principles of democracy- provided for in the preamble to the Draft Constitution of India.			
22.	If clause 1 goes beyond clause 2, what exactly does it mean? +What distinction is intended between "citizen" and "national".				
23.	In clause 1 only a general statement of clause 2 and 3. Is it the State's duty to see to the right to work of all "residents".				
24.	I am unable to see how "pay commensurate" is to be judged or by whom. Are persons with large families entitled to more pay.				
	Clause 2. The meaning of "with the same advantages" is not clear. Does it mean "under similar conditions".				
26.	Clause 2. Would be extremely dubious to ANgenists. "What about the equality of the sexes"?				
27.	Why not the same words as in Art. ~~III.~~ 3. Please also see comments on that Article.				
29.	Clause 2. might be wolly impossible in certain economic conditions.				
30.	I probably do not understand the meaning or intention of this article. It might mean complete nationalisation of all arts and artists.				
31.	If I had to make a choice I would prefer the 2nd. I do not like a free right to establish and maintain all kinds of cultures and religions even if not immediately dangerous to public order. Still this is better than corresponding articles, e.g. 3 and 27 which have no limitation at all.				
32. & 33.	"iny" perhaps = in any. "to" should be "at". Please cf Art 31 and 33. Suppose one preached or persuaded against separatism. Is this not allowed?	The provisions may stand.			

Please see p. 24 E/600 proposal of Lebanon and its corresponding Article in Covenant Art.27.

This Ministry is concerned only with articles 31 to 33 on pages 9-10 read with the two texts on article 17 proposed by the Drafting Committee and by the Representative of the United States on page 34. (Doc E/600) Sub P 0' paragraphs

The difference between the two drafts are that while the Drafting Committee suggests certain "necessary restrictions, penalties or liabilities" the U.S. draft does not do so. Also, while the Drafting Committee recommends that every person shall be free "to receive and disseminate information of all kinds", the United States of America would have added to it the clause "to seek information and the opinion of others from sources wherever situated". The comments of Uruguay on Article 17 on page 40 are more in line with the United States of America draft.

(2) Draft Covenant on Human Rights.

No. of Article.	Legal Adviser.	Comments from Ministry of Home Affairs.	C.R.Wing.	Ministry of Law.
1	There is no possible agreed definition of "civilized nation" that I am aware of.			
2.	(a) I think this is too wide. See Art. 12. (b) See above Art. 1. (c) No comment. See however (e) below. (d) How is independence which implies "impartiality" to be secured. (e) Cf with (c) above.			
3.	Does this imply a 2/3rd or simple majority.			
5.	This might raise controversial points. The Shariat provides death for adultry. The manner or method of execution is not provided for.			
6.	Some persons cannot will or cannot express it. Some provision is necessary for this.	The provisions are implied in the Draft Constitution of India.		
7.	Difficult to define "cruel, inhuman, or indignity". Still I suppose some sort of general consensus of opinion might be found to exist.	------do---------		
9.	Clause 5. An arrest might finally be found unlawful though bona fide and morally justified.	We have in our laws (for instance the States Prisoners' Regulation 1818 and the public Safety Acts) provision for the arrest of a person for detention without trial. Para 2 (a) of this Article provides for the arrest of a person if such arrest is reasonably considered to be immediately necessary to prevent his committing a crime. This corresponds to our formula of "about to act in a manner prejudicial to the maintenance of law and order etc." and might cover the provisions for arrest for detention without trial.		
10.	There may be contractual obligations between the State and an individual. If this article applies only to contractual obligations between private persons I have nothing to say. If it applies also to State contracts then there is much to say against it.	This article seeks to bar imprisonment as a punishment for breach of civil contracts. The Law Ministry will be able to comment on this.		
11.	Cl. 1. "In the general interest". By whom is this to be judged. It seems to open the door to all kinds of discrimination. Cl. 2. If expressio unius exclusive alterius applies, then a political prisoner actually arrested and escaping might have no right of asylum.		C.R.Wing have no comments, except those ~~in xxxxxxxxx mentioned~~ on Article 10 of the draft Declaration on Human Rights, with regard to this Article. The other articles appear suitable. Indeed, there is nothing in this Covenant which runs counter to our State policy and to the proposed draft Constitution for India recently published by the Constituent Assembly.	
12.	Arbitrarily is difficult to define.	This provides that no alien legally admitted to the territory of the State shall be arbitrarily expelled therefrom. The word "arbitrarily" seems to provide sufficient cover for any action for deportation of a foreigner that the State ~~xxxxxxxxxxxxxx~~ may take and there is no objection to the Article as it stands.		

General Comments of the Ministry of Laws

The Draft International Covenant on Human Rights stands on somewhat different footing in-as-much as thereunder, each State undertakes to ensure that its laws should secure to all persons within its jurisdiction, whether citizens or persons of foreign nationality or State-less persons, the enjoyment of certain human rights and fundamental freedoms. Before signing this Covenant, it should be seen to what extent the laws of the country concerned proposing to sign the Agreement is in accord with the terms of the Covenant. It appears that if the Covenant in its present form is agreed to, it will involve changes in the law in certain respects.

No. of Article.	Comments from Legal Adviser.	Ministry of Home Affairs.
13.	Cl.1. "Independent and impartial", cf Art. 2(d). Cl. 2. Some trials for reasons of security, public morals etc. have to be held "in camera".	
14.	Cl.2. Its scope and meaning are not clear. It might have the result of securing the trial and punishment of a person for a crime which he honestly (i.e. bona fide believed) did not think was a crime.	
15.	"person" presumably here means a living human being, not a legal "persona", juridical personality" is not a clear term to me.	
16.	This article is open to objection. (1) Religion is not defined. (2) A Jain presumably could not be conscripted. Read with clause 3 this freedom might become wholly illusory.	
17.	Not being in final form, it is not necessary to go deeply into this section.	
18.	Can only be considered with Art. 17 to which it refers.	
19.	It depends on Articles 16 and 17 for which see above.	
20.	I again record my opinion as to religion, political or other opinion". These words are much too wide.	
21.	I would prefer "with intent to incite to violence" instead of "Constitutes an incitement to violence"	This is a useful provison. Had it been in force some years ago, it would have enabled the enactment of a law to prohibit propaganda in favour of the two Nation theory of the Muslim League. This is welcomed.
22.	I can hardly think that this Covenant is more sacrosanct than any creed.	This follows Art. 33 of the draft declaration and should stand.
23.	I should like it made clear whether a State may accede with reservations qua certain articles and under what conditions.	
24.	Gives a preference to Federal Constitutions which does not seem justified e.g. with respect to the Negro problem in the Southern States or the Indian problem in the S.A.Union.	
25.	I do not know the exact reason for the insertion of this article. It would however show that a colony might be unfit to apply these rights and freedoms, but this also shows that these rights and freedoms are not universally applicable, and if so, what is the ground for holding that they are all applicable to "civilized nations".	
26	No comments. It however shows that reservation should be allowed under certain conditions.	

Ministry of Home Affairs.

This Ministry is concerned only with paragraphs 31 to 33 on pages 9-10 read with the two texts on article 17 proposed by the Drafting Committee and by the Representative of the United States on page 34 of document E/600.

The differences between the two drafts are that while the Drafting Committee sugests certain "necessary restrictions, penalties or liabilities" the U.S. draft does not do so. Also, while the Drafting Committee recommends that every person shall be free "to receive and disseminate information of all kinds", the United States of America would have added to it the clause "to seek information and the opinion of others from sources wherever situated". The comments of Uruguay on Article 17 on page 40 are more in line with the United States of America draft.

The two drafts show clearly the conflict of interest between those countries which are anxious to maintain some official control over the flow of information and those which are anxious not so much to bring about freedom of information as to pull down the walls of censorship and security which certain countries have erected, with the object of swamping them and the rest of the world with their own ideas and opinions. The United States of America draft would appear to be directed to be directed against Russia, but both the drafts are equally directed against Asia. The chief difficulty in the world today is that while the west through its highly developed media of information, particularly news agencies, can project its ideals and institutions to the East, countries in the East have no such facilities for projecting Asia to the West. Yet it is obvious that Asia will never be understood in the West if the field is overrun by Anglo-American information interests. Accordingly this Ministry suggests that we should try to justify our policy as dictated not by Indian needs which may be questioned but by Asian requirements. Economically poor, Asia is culturally rich, and its countries by virtue of their manpower resources are destined to play an important part in maintaining the peace and progress of the world. Until they are in a position to compete on terms of equality, information media in Asia, therefore, need protection against Anglo-American information media which are highly developed in organisation and resources.

It is therefore suggested that our support should be given to the Drafting Committee's report subject to what has been said above.

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(3) Suggestions for implementation contained in Document E/600.

Legal Adviser.

Until one knows the new Constitution of India it is difficult to form any opinion on the extremely valuable discussion on the 4 legal points in particular with reference to questions C and D.

However I am quite clear that without an International Court, any disputes arising would only be causes of friction and the presence of the Covenant would merely increase the friction and its interpretation tend to form "blocks"

As regards the right to petitions, the former procedure of the League of Nations qua minorities would furnish useful guides. In particular the establishment of examining Committees. The Constitution of the committee is a matter of doubt. I agree with the recommendation at E/600 p.52 re petitions from International Associations.

I do not agree with extending the Security Council's functions. It serves no useful purpose so long as the veto exists and without the veto would tend to interfere with sovereignty. This also applies in a lesser degree to the General Assembly and the Economic and Social Council.

As regards the constitution of the Court, I am inclined to think it should be separate from the International Court of Justice but the matter is extremely complicated and much turns on the mode of constitution of the Court.

As to the execution of the Court's decisions without the Security Council, i.e. sanction of force, there is little reason to suppose execution will be possible. Still a moral suasion in the recommendations of the G.A. is perhaps all that can reasonably be expected.

In conclusion, I should like to point out that each of these clauses in the Covenant and Declaration should be studied in view of the questions likely to arise in India and the question of their general validity should occupy a secondary place. I am not sufficiently acquainted with the conditions and politics of India to do much useful examination on these lines. If a particular point was posed to me, I might have something to offer from the general validity point of view.

Ministry of Home Affairs.

This Ministry agrees with the views of the working group on Implementation in general subject to the following comments:-

(a) The working group provides that only States but also associations, individuals and groups can petition the Human Rights Commission regarding violation of Human Rights and non-governmental organisations, provided they originate in a country which has ratified the Covenant, can also petition the Commission (para 36 (c) of p. 50 of Annexure C). This Ministry however feel that we should not agree to parties other than Member States being given the right to submit complaints regarding the violation of human rights. This seems to have been recognized so far by the Member States of the U.N.

(b) The view of the Govt. of India expressed in September 1947 as regards the nature of the Court to be set up to try cases of violation of human rights, should stand namely:-

(i) the implementation of any international bill of rights rests with the General Assembly of the United Nations;

(ii) no Court of Human Rights need be established and

(iii) if necessary by suitable enlargement of the functions of the International Court of Justice, the latter may be made competent to advise the General Assembly on questions involving infringements of human rights.

Ministry of Law.

As regards Implementation, the question will arise after the forms of the Declaration and Covenant are actually settled.

The proposed draft Constitution of the Dominion of India contains a statement of the fundamental rights in the new Indian State. I have not been able to get a copy of the Constitution, but from the summary published in today's papers, it would appear that these fundamental rights are divided into two classes:- (i) certain rights regarding freedom of speech, freedom to assemble peaceably and without arms, etc. rights which can be enforced in a Court of Law and it appears that there is a provision giving a right to move the Supreme Court for the enforcement of these fundamental rights: (ii) there are certain other rights which though not enforceable by any court, are nevertheless fundamental in the governance of the Country and it is specifically provided that it shall be the duty of the State to follow these principles in making laws. As regards these fundamental rights which are really directive principles of State policy, various injunctions are given regarding the right to education, to just and humane conditions of work, to a living wage for workers and so forth.

India can agree only to those fundamental rights which will be in accord with its own Constitution. As regards Implementation, it has already been Stated that the right to enforce certain fundamental rights in a Supreme Court is guaranteed in the new Draft Constitution. This will probably suffice, but if any State wants to raise a question that its nationals are being deprived of any fundamental rights which are guaranteed by the Covenant, provision may be made for the decision of such questions in an International Court. The occasion for a reference to the International Court by any State against another State will probably be rare.

C.R.Wing.

C.R.Wing are in general agreement with all the conclusions arrived at by the working group. C.R.Wing note that the question of setting up of an International Court on Human Rights has been left open by the Human Rights Commission who are awaiting the comments of the Member States. They also note that the working group did agree to the setting up of some form of a Court but they were not sure whether it should be a new Court or the functions should be entrusted to the International Court of Justice. C.R.Wing were, in the past of the opinion that the constitution of a new Court would mean unnecessary duplication and that the present International Court of Justice should be vested with powers of deciding any dispute relating to the infringement of any human rights. After reading Mrs. Hansa Mehta's report, however, they will not insist on this view, considering that the amendment of the Charter is a difficult business and an amendment would be necessary if the International Court of Justice is to be empowered to deal with applications from Associations or individuals regarding the breach of Human Rights. They will, therefore have no objection if a New Court is set up. C.R.Wing would, however, add that it is not necessary to hurry the setting up of a new International Court on Human Rights or to amend the Charter. They consider that the Standing Committee proposed by the working group (at p.53 of E/600) promises to prove a most valuable committee for investigation and settlement of disputes and cases relating to the infringement of human rights by conciliation. It would probably be worthwhile waiting to see how the machinery of this Committee works under the aegis of the Human Rights functions and thereafter consider the question of a constitution of a new court on Human Rights. C.R.Wing note that the working group has not proposed any exclusive procedure for redress in this respect and has emphasised the right of the General Assembly and other organisations of the United Nations to discuss and make recommendations in regard to violation of the Convention of Human Rights.